

scottish justice matters

ENVIRONMENTAL CRIME AND JUSTICE

ALSO

Albie Sachs and Andrew Coyle
on prisoner voting

Interview with former Cabinet Secretary
for Justice Kenny MacAskill MSP



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editorial

IT REMAINS TO BE SEEN if the decision by Michael Matheson, the new Justice Secretary, in January, to halt the contract to build a national women's prison at HMP Inverclyde, will usher in a new era of progressive penal politics in Scotland. As the former incumbent, Kenny MacAskill notes in our interview, the money saved, if indeed there are any savings, cannot be simply switched to community rather than custodial sanctions, but a direction of travel and precedent has been established.

The frenzy of SPS consultations taking place during March focus understandably on the future of the women's *custodial* estate. It is to be hoped that the energy put into the debate around Inverclyde by diverse groups and voices, will attempt to frame this narrow brief more widely in terms of what is a feasible, wider justice response to (women's) offending, especially given an apparent political consensus. If it is true that there is a political opportunity here then it was also perhaps disappointing that the decision was followed up a week later with more restrictive and rather unconvincing proposals relating to automatic early release. Was the one a trade off for the other, and if so what does this tell us about the politics of penal reform from hereon?

SJM will keep this agenda to the forefront both in the printed issues and also in our blogs (scottishjusticematters.com/sjm-blog/)

In the meantime our theme editor Hazel Croall has broken new ground for *SJM* by pulling together a focus on environmental crime and justice in Scotland for this edition. Why do environmental crime and justice matter?

Environmental crime involves a wide range of harms indicated in the range of contributions dealing with waste, pollution, food poisoning, the deliberate killing of wildlife, farming and fishing crimes. It matters also because tackling these harms involves serious issues of social justice. Both globally and locally, environmental injustices are seen in the more adverse impact on people and communities least able to counter them.

Criminal justice matters in that it can play a major role in underlining the significance of these issues. There have been signs in Scotland of a toughening attitude with the creation of the Environmental Crime Task Force, and addressing this, the Lord Advocate has suggested a series of tougher

sanctions, including the creation of an Environmental Court. Unfortunately the Wildlife Crime Penalties Review Group set up by the Scottish Government is not due to report until after publication, but their findings will be interesting, and hopefully, the subject of a future article in the *SJM*.

Finally, environmental justice matters in Scotland in view of the importance of the environment to the country and its economy. There is scope, as many of our contributors suggest for Scotland to take a more radical approach than the rest of the UK jurisdictions. Our politicians in Take Five give their take on what policies might be pursued. Many of these strands are reviewed in our interview with environmental journalist Rob Edwards.

The environment can also be an important element in offender rehabilitation and prisoner reintegration as is reflected in the work of the charity Care Farming described by Matheson, and in our other international contribution, from Tasmania. The importance of the environment for criminologists, suggested by South, is also seen in the growth of and spate of publications relating to 'green criminology', and our book review slot contains a review of two of these by Jo Buckle.

In our current issues section read Schinkel's article on her research into how long term prisoners in Scotland see the experience of imprisonment, and the article by Roberts explaining why proposals for legislation calling for a Child and Family Impact Assessment to be carried out in relation to imprisoning a parent are important.

In the run up to the Westminster election we are delighted to bring you an exchange on prisoner voting rights between Albie Sachs, long time opponent of the apartheid regime in South Africa and then a justice of the new Constitutional Court, and Andrew Coyle, contrasting the position between that country and the UK.

Anna Forrest's second article in our history strand exposes something of the horror of child prostitution in Victorian Glasgow based on her investigation of original documents.

Finally, Kate Graham brings us completely up to date by sharing her working week as an advisor with the court based domestic abuse victim service, ASSIST.

Let us know what you think of the *SJM* by contacting us at editor@scottishjusticematters.com.

Mary Munro and Hazel Croall



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scottish justice matters

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JUSTICE FOR ALL?



ALTHOUGH not generally seen as a traditional area of crime and criminal justice, the impact of environmental harms is enormous and they are increasingly viewed as important areas for criminal justice intervention. As our contributions indicate they involve serious issues of health, safety and fraud. As is the case with many other forms of white collar and corporate crime however, their nature makes them less likely to be seen in the same light as assault, robbery or theft. They lack an immediate face to face confrontation between offender and victim, victims are often unaware of any crime being perpetrated, and it is very often difficult, particularly where large organisations are involved, to pinpoint a 'guilty' individual. The concept of victim extends from individual citizens to non-human animals and to the environment itself.

Offenders also differ from traditional images of 'criminals': while the concept of white collar and corporate crime has gained some recognition, environmental offenders are more likely to be dressed in Wellington boots, or indeed deerstalkers or oilskins. While there are, as in the growing illegal market in waste, more traditional villains involved along with a host of small farmers, fishermen and fly by night tippers, other serious offenders include some of our largest corporations, involved for example in oil, whisky, and defence (Croall, 2015). It is also worth noting that at the root of many environmental harms lies the perennial problem of prioritising profitability, efficiency and exploiting natural resources over the interests of safety, communities and the environment in general. As some of our contributors illustrate, it is costly to dispose of contaminated waste or to prevent pollution, and effective enforcement also requires resources which may be difficult to obtain in a period of austerity, particularly if it is seen as unnecessary 'red tape'.

There is also need to incorporate, within notions of justice, issues of environmental justice and human rights. Access to justice and the rights of the public to participate

in environmental decisions affecting their community are important elements. Environmental injustice is seen when considering the impact of environmental harms. While many may be relatively indiscriminate (all UK citizens for example risk contracting food poisoning, suffer from pollution and are endangered by breaches of nuclear safety), others have their most adverse effect in the poorest areas and globally citizens in less developed nations suffer when waste is exported or hazardous forms of production are sited there.

As environmental 'harms' are not always seen as 'crimes', the way in which we deal with them also differs from so called conventional crime

As environmental 'harms' are not always seen as 'crimes', the way in which we deal with them also differs from so called conventional crime. In general terms we refer to 'regulation' rather than 'policing', 'sanctions' rather than 'punishment', and the area known generally as regulatory crime is often characterised by a relatively low rate of prosecution or enforcement. Recent years have seen a preference for administrative sanctions, seen as more cost effective. When prosecuted, offenders tend to receive sentences widely seen as lenient, with even large fines for corporations being low, particularly in relation to a large company's turnover.

Complex issues are involved in these discussions. On the one hand it could be argued that those responsible for causing harm *should be* 'named and shamed' and subject to the full force of the criminal law and that and that this can in turn act as an important deterrent and express disapproval of the activities in question. On the other hand, there are limits to how

far a company for example can be fined: this is the so called deterrence trap whereby too high a fine can threaten prices, employment and have a spillover effect on local communities. Furthermore, there is a contradiction in arguing, as many do, for a reduced use of imprisonment for conventional offenders while at the same time advocating more custody for corporate and environmental offenders. Rob Edwards makes this point in relation to gamekeepers for example. There have long been calls for seriously considering an alternative range of sanctions including for example, restorative justice or community payback, whereby polluters may be required to undertake environmental projects.

Many of these themes are illustrated by our contributors. Nigel South starts by outlining the importance of environmental justice and different strategies involving civil and criminal law required for regulating environmental harms, the ultimate victim of which, he argues, is the planet itself. The *Aarhus Convention*, the subject of the contribution by Mary Church from Friends of the Earth, deals with requirements to provide the public with information and opportunities to participate in decision making about environmental issues, and she stresses the importance of implementing this in Scotland, through for example, the provision of an Environmental Tribunal.

Other contributions deal with a range of harms and aspects of the criminal justice response. In a wide ranging interview based on his experience of reporting Environmental matters, Rob Edwards talks of the many changes, largely positive, in relation to regulation, and to the increased transparency occasioned by the Freedom of Information Act. There is however still much to be done and in particular he highlights the importance of transparent and efficient regulation in relation to the nuclear industry.

Rob Smith outlines the different ways in which farmers are involved as environmental criminals, engaging in acts such as fly tipping, illegal dumping and poisoning wildlife. This in turn carries a message for rural policing. Sir Hugh Pennington, on the basis of his extensive experience of dealing with, often fatal, outbreaks of *E.coli* O157, outlines the significance of HACCP (Hazard Analysis and Critical Control Point System) and considers the role of public inquiries, stressing the importance of implementing their recommendations. Andrew Watterston examines the many public health issues and the death toll associated with air, water, soil and food pollutants many of which have an adverse effect on those living in areas of multiple deprivation. He also explores regulatory issues particularly arguing that there is a need to have sufficiently resourced agencies and the ability to impose tough penalties particularly for large companies. Ian Thompson from RSPB explores the difficulties of estimating the extent of killings of birds of prey and the difficulties of obtaining evidence for convictions. He outlines two recent prosecutions one of which uses the new laws in relation to vicarious liability. Problems of obtaining evidence both in respect of the scale of the problem and the prosecution of offenders are also seen in the issue of 'gear conflict' in relation to fishing, well described by Nick Underdown. This, which can have a devastating impact on local communities, is rooted in the inshore fishing industry.

There are signs of a tougher approach, particularly towards waste crime, an increasingly lucrative illegal business which also involves organised crime. Gayle Howard from the Scottish Environmental Protection Agency (SEPA) outlines SEPA's response to this including the work of its waste crime unit and the creation of the Scottish Government's Environmental Crime Taskforce (ECTF). Environmental harms are global in nature, and international initiatives are vital and she outlines the international nature of SEPA's work. In our international contribution, Lieselot Bisschop describes this international trade and outlines its damaging impact on third world populations.

It is important to recognise that the environment can also be involved in rehabilitation and other initiatives for conventional criminals, and Caroline Matheson outlines the work of Care farming in Scotland. Hannah Gordon and her colleagues explore a project in Tasmania utilising environmental projects for ex-prisoners.

Given the international nature of much environmental crime, what is the potential contribution of a Scottish Government? As Edwards points out there is scope, within the UK, for the Scottish Government to take radical action and there are signs of a toughening approach to some forms of environmental crime. At the time of writing, we await the report of the Scottish Government's Wildlife Crime Penalties Review Group and, in a speech to the first conference of the Environmental Crime Task Force in November 2014, the Lord Advocate made several suggestions for strategies which could send a "huge and powerful message" about the seriousness of this area of criminal law. The creation of a specialist environmental court was one strategy along with a specialised Sheriff or Judge for environmental crime, bespoke penalties for polluters, clean-up orders where the polluter is responsible for paying the cost of restoration and publicity orders in which adverts could be placed in newspapers upon conviction and sentence. He further mooted orders preventing directors of companies convicted for environmental crime becoming directors of companies doing environmental work, and giving the courts power to withdraw licenses for operating an environmental business where they are breached. These suggestions were 'thrown out there' for "consideration as to how to increase the risk of getting caught to make environmental breaches really unattractive." They are to be discussed this year which underlines the timely nature of this edition of *Scottish Justice Matters*.

Hazel Croall is professor emerita, Glasgow Caledonian University and consulting editor of *Scottish Justice Matters*.

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ENVIRONMENTAL JUSTICE

Nigel South on the challenge posed by environmental crime for criminal justice

IN THE 1990s and early 2000s, NGOs such as Friends of the Earth Scotland, managed to raise the profile and legal standing of the concept of environmental justice across the U.K. However, in subsequent years and in the context of an economic recession, governments everywhere have become wary of environmental protection measures in case these are seen as a burden on business and the economy. So Pedersen (2014) has rightly asked 'What happened to environmental justice?'. The answer lies with its 'susceptibility to political neglect in accordance with executive winds of change'. Thus he argues that, 'environmental justice is today most notable by its absence when it comes to official directives, guidelines and statements'.

All of this raises important questions about the problem of environmental crime and harm and how satisfactory current systems of policing, regulation and law are in a world increasingly facing changing environmental problems. Although awareness of environmental issues has grown, the problem of response faces familiar tensions and dilemmas, and meanwhile, the political agenda has a tendency to move uncomfortable and difficult challenges up and down the scales of importance and urgency, with resources diminishing as the priority reduces and the courts tread carefully. Weaknesses in the models of regulation and enforcement mean that environmental offences are often not accorded the seriousness they deserve, whether due to the way the prosecution case is presented or the defence responds.

Environmental crimes and harms as a challenge

'Green' criminologists, interested in crimes and harms that damage and destroy the environment, define the subject in a broad way, encompassing, for example, pollution and its regulation; corporate criminality and its impact on the environment; health and safety in the workplace where breaches have environmentally damaging consequences; involvement of organised crime and official corruption in the illegal disposal of toxic waste; the impact and legacy of law enforcement and military operations on landscapes, water supply, air quality and living organisms populating these areas - human, animal and plant; as well as forms of law enforcement and rule regulation relevant to such acts (South and Brisman, 2013).

Environmental harms and crimes can be transnational yet always have a point of origin and specific sites and populations that suffer the impacts and effects. Regional and national contexts are important and, in turn, shaped by law, culture, traditions and politics. What seems intolerable pollution or living conditions to some is normality for others.

The challenge for environmental and criminal justice

According to Lewis (2012: 87) environmental justice can be defined in terms of

inequality or unfairness in the distribution of environmental burdens, where there is exclusion from the processes which determine how that distribution will be effected, or where disproportionate distribution is not balanced by sufficient reparation. This extends to potential injustices between developed and developing states, and between present and future generations.

In this way environmental justice and human rights can be seen as tied together. There is some expression of this in various international treaties, in some national laws and constitutions, in propositions that environmental rights should be seen as human rights and in cases where human rights regimes explicitly incorporate environmental rights for current and future generations (Gianolla, 2013). However it is difficult to achieve and maintain high-level support for such ideals or to mobilise an effective response in cases where both rights and the environment suffer, are violated and destroyed.



Legality, legitimacy and justice

Environmental crimes and harms may be committed by those who can draw on legal standing and legitimate status, but such actions should be responded to not just on the basis of legality and legitimacy but also justice. The relationships between these powerful notions, and the gaps between them, are complex and significant.

While governments may make law, corporations can find ways to bend it; while certain actions may be legal, in a normative sense they may be neither just nor legitimate. In order for criminal justice and regulatory response to avoid the erosion of legitimacy and claims to justice then, as Skinnider (2013: 3) observes, 'There is a need for [such] ... systems to function with certainty in order to be fair and consistent'. The question is whether environmental crime and harm can be effectively addressed by existing systems of criminal justice, regulation and law? If the answer to this question is 'no', then, in turn, as Popovski and Turner (2008: 7) suggest, 'the legitimacy of law can be undermined by its structural inability to face urgent problems and respond to pressing issues'.

From the point of view of a 'green' criminology, the ultimate environmental victim is the planet

Popovski and Turner (2008: 6) remind us that 'legitimacy needs law as much as law needs legitimacy'. The two need to be able to catch up with each other and be complementary. Environmental crime provides a perfect example of an area of hugely significant activity where, at present, they do not always do this. Of course, sometimes flexibility is needed in law. Equally, sometimes claims to legality and legitimacy do not really deserve to be respected or supported. As Popovski and Turner (2008: 6) argue, 'appeals to legitimacy outside the law are vulnerable to opportunism by powerful states, with dangerous consequences'.

Powerful states can and do opt out of attempts to create internationally legally binding environmental controls and agreements. Similarly, big business often makes successful calls for exemption or exceptional leniency with regard to environmental regulation and argues that it is authoritarian and misunderstands the reality of business needs. Opt-outs and exemptions are legal and have legitimacy but may not serve the wider interests of justice.

Criminal justice, environmental politics and public participation.

One hope for enhanced legitimacy and justice in legal and enforcement systems lies with demands for greater consultation and public involvement. In relation to developments in the UK, Pedersen (2014) asks whether the 2008 Regulatory Enforcement and Sanctions Act which emphasises use of civil rather than criminal sanctions, will have implications for environmental justice. This could, he notes, be a welcome development if it is successful in encouraging and delivering greater compliance. Pedersen also suggests it could make *even more* of a contribution to environmental justice if the communities affected and distressed by environmental damage were to be engaged in the processes of 'negotiation and application of enforcement undertakings where these include provisions for community compensation'. As yet

there is no indication that this is happening but, even if the prospects for genuine involvement are not good, this is an important point.

Legitimacy is enhanced by participation and, in theory, movements in international law are seen by some as leading to enhanced public involvement in environmental matters. International agreements such as the Aarhus Convention are supposed to be leading towards citizen rights to environmental information, a voice in decision-making and 'access to legal remedies where environmental laws are broken' (Christman, 2013: 6). However, it has to be recognised that while provision of information is one thing, the rights of citizens to *meaningfully* participate in decision-making is quite another, and their willingness and ability to engage is something else again. Furthermore, as Christman neatly puts it, while citizens may be 'invited to submit comments on an activity ... decision-making rests with government'.

Nonetheless, as Pedersen (2014:2) points out, it may prove to be significant at both international and national state levels, that a recent report from the UN Independent Expert on Human Rights and the Environment has suggested that states run the risk of failing to satisfy their responsibilities in relation to human rights if domestic environmental laws are not enforced. Possibly the most promising scenario for a society that can accommodate and take seriously criminal, social *and* environmental justice is one in which we recognise that we are individually and collectively responsible for the health of our environment and that we or future generations will suffer if we do not preserve it. From the point of view of a 'green' criminology, the ultimate environmental victim is the planet – we share it and it sustains life. There cannot be any better argument for developing and implementing strategies to prevent crimes that damage the environment and for enforcing laws that are designed to protect it.

Nigel South is professor of sociology and director of the Centre for Criminology at the University of Essex and has written and published widely on the topic of environmental crime and green criminology.

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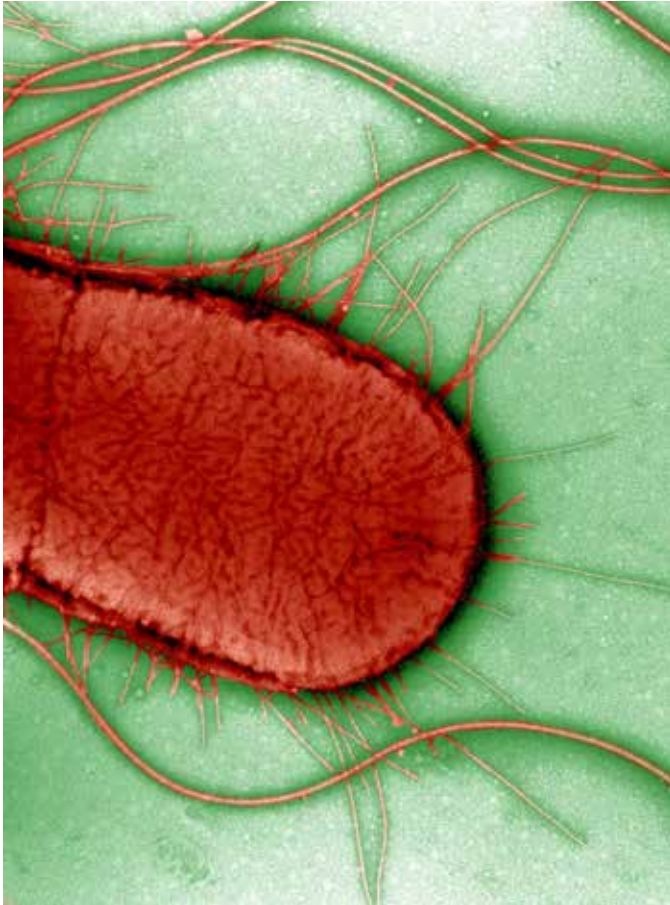
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Escherichia coli cell
© Debbie Marshall and David W Gregory, University of Aberdeen.

E.coli O157

AND THE LAW

A personal view by **Hugh Pennington**

***E.coli* O157** infections in humans are commoner in the UK than in any other European country, and they are a lot commoner in Scotland than in England: we have the highest incidence of infections in the world. The only good news is their relative rarity: Scotland recorded 234 in 2012 but 6333 *Campylobacter* cases. Norovirus is even commoner, by orders of magnitude. It is the common cold of the bowels. However, excepting civil actions by passengers who contract norovirus gastroenteritis on cruise liners and in hotels, neither of these common pathogens involves lawyers, except as victims. This is not true for *E.coli* O157. Its life changing effects and lethality explain why.

In evolutionary terms it is brand new. It appeared suddenly in the early 1980s. In the US it was called the “burger bug”, because of its association with the consumption of fast food chain beef burgers. Not so here. We prefer our burgers well cooked.

The natural home for *E.coli* O157 is the intestines of cattle and sheep. It is very well established in Scottish herds and flocks. It causes no illness in them, only in a person who inadvertently consumes bacteria from their faeces.

The biggest UK outbreak ever, occurred in central Scotland in November and December 1996. Contaminated meats sold by the Wishaw butcher John Barr infected 503, and killed 17 elderly people. The outbreak came to light on 22 November and the local Outbreak Control Team met on the evening. On 28 November the outbreak was still in progress, with 5 deaths, and the Secretary of State for Scotland established an expert group, chaired by the author, ‘to examine the circumstances which led to the outbreak ... and to advise on the implications for food safety and the lessons to be learned’. We met in private at St Andrew’s House, Edinburgh (without lawyers) and delivered our interim report on Hogmanay. Our final report was presented to the House of Commons in April 1997. It recommended the legislative acceleration of the implementation of full HACCP principles by food businesses. HACCP (Hazard Analysis and Critical Control Point System) is a structured approach to identifying the potential hazards in an operation, dealing with them, and documenting what has been done. To fast-track this for butchers we recommended a licensing scheme, the award of a license being dependent on implementing HACCP or an equivalent prescriptive scheme. It started in England and Scotland in 2000, in Wales and Northern Ireland in 2001, and remained in force until 2006.

A police investigation lasted from 29 November until 7 February 1997, and on 10 January 1997 John Barr was charged with culpable and reckless conduct arising from the supply of cooked meats. At trial in January 1998, he pleaded guilty. His firm was fined £750 for breaches of hygiene under the Food Safety Act and £1500 for selling meat contaminated with *E.coli* O157. His business closed. At the time of the outbreak it was successful and expanding, employing 40, and he was ‘Scottish butcher of the year’ by customer vote.

A Fatal Accident Inquiry announced by the Crown Office on 5 December 1996 began on 20 April 1998 and lasted until 25 June 1998. Sheriff Principal Cox published his Determination on 14 August 1998.

He said ‘I have no doubt Mr John Barr liked a clean shop and maintained a clean shop. What he failed to do was maintain a

safe shop and the main ingredients of his failure was ignorance of the requirements which would produce that result'. He listed the hazards – the lack of provision of separate knives, work tables, scales and vacuum packers for raw and cooked meats, the cleaning of work surfaces with a detergent that had no bactericidal effect, and the lack of a clear management structure to enforce food safety measures – and criticised the environmental health officers who had inspected the premises for failing to identify them.

Outbreaks of infectious intestinal disease associated with butchers fell, from five in 2000, three in 2001, one in 2004, to none in 2002 and 2003. But in autumn 2005 the second biggest UK outbreak (157 cases) occurred in South Wales. Most were in schoolchildren at 36 primary and eight secondary schools. Eight developed severe complications and on 4 October, Mason Jones, age five, died. Contaminated cooked meats supplied to the schools by a butcher's business run by William Tudor caused the outbreak. A committee of the Welsh Assembly proposed in November that I should chair a Public Inquiry under the 2005 Inquiries Act. The Inquiry formally started on 13 March 2006. An Inquiry team and office were established and background work began.

The prevention of *E.coli* O157 infections is paramount. Once established, very severe and possibly lethal complications cannot be prevented by any medical measures.

A police investigation ended in February 2007. The CPS decided not to prosecute, but local authorities did. William Tudor pleaded guilty, and on 7 September 2007 was sentenced to 12 months imprisonment and prohibited from participating in any food business.

Inquiry public hearings started on 12 February 2008 and lasted until 19 March 2008; 63 witnesses were called. After publishing a Note of Emerging issues calling for participants to provide updates of post-outbreak changes, and 'Maxwellisation' – giving notice to individuals and organisations of potential criticism and/or adverse comments with the opportunity to respond, the Inquiry Report was published in March 2009. I concluded: 'The only systems that worked well were outbreak control and clinical care. There were system failures everywhere else. Issues around HACCP were the most important. Wherever it should have been applied, there was insufficient appreciation of its power to deliver safe food. I had hoped that the lessons from the shocking events in 1996 would stay in people's minds. But comparison of the failures that led to this outbreak in South Wales with those in the outbreak in Scotland shows that this has not been the case'. I made 24 recommendations, 15 focusing on HACCP and related issues. In response, the Food Standards Agency set up a four-year Food Hygiene Delivery Programme.

The majority of *E.coli* O157 infections in Scotland are sporadic. The source of the bacterium is often not found, but animal contact has been responsible for a number of outbreaks.

It can have tragic consequences. I was instructed as an expert witness in the case of four-year old Tom Dowling. On June 30 1997 he visited an open farm near London, where he stroked animals and clambered on fences. He became infected with *E.coli* O157, developed severe neurological complications with epilepsy and quadriplegia, and was left unable to speak or eat. Legal proceedings started in January 2001, and a settlement of £2.6 million was agreed. He died in 2006.

The prevention of *E.coli* O157 infections is paramount. Once established, very severe and possibly lethal complications cannot be prevented by any medical measures. Carriage of the organisms cannot be controlled or routinely identified in farm animals; a few excrete very large numbers, many none, almost certainly explaining why butchers like John Barr and William Tudor operated unsafely for years and why open farms can become complacent. The *E.coli* O157 challenge for them is very infrequent.

HACCP works. Ideally a food business prepares its own plan, but SMEs will probably buy one. Their understanding of hazards is sometimes poor. And there is dishonesty; William Tudor lied to environmental health officers, and John Barr was economical with the truth. Such behaviour poses a big challenge for regulators. While it is a step too far to continually invoke Paxman's principle ('Why is this person lying to me?'), box ticking will not do; personal experience and even intuition is very important in detecting the ill-intentioned but well-informed operator.

In my experience Inquiries have been good at identifying lessons but less effective at ensuring that they are learned. It is paradoxical that once a costly Public Inquiry report is delivered, the Inquiry's standing stops forthwith. Debates about how best to investigate a catastrophe continue. Parliamentary Committees usually divide along party lines. Public Inquiries need lawyers so are expensive (my team prided itself on limiting expenditure to £2.4m) and take years. Expert Groups report quickly and are inexpensive (mine cost £45,000). But the Scottish Government has a particular faith in judge-led processes under the 2005 Inquiries Act. Making Lord Hardie's Edinburgh Tram Inquiry statutory is intended to force recalcitrant witnesses to cooperate. One hopes he has better luck than Lord MacLean had in his Vale of Leven Inquiry with NHS Greater Glasgow and Clyde and some key witnesses. Like my South Wales report his findings make sorry reading, particularly his conclusion after comparing reports of *Clostridium difficile* outbreaks in England with what happened later at the Vale of Leven Hospital. The similarity was striking: 'Lessons had not been learned', he wrote.

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Rob Edwards' Sunday Herald columns and blog will be familiar to those interested in the environment. Having written largely about Scottish environmental issues, for more than 30 years, Rob's interest in the environment dates back to his childhood when the M25 passed through woods near his house, destroying animal habitats. He is however, modest about what he, as a journalist, 'knows'.

Hazel Croall, theme editor and **Mary Munro**, managing editor of Scottish Justice Matters held a wide ranging conversation with him in early 2015, extracts from which can be found below.



REPORTING ON ENVIRONMENTAL CRIME AND JUSTICE

SJM: In the period you have been reporting environmental issues, what main changes have you seen?

RE: A lot has changed. Environmentalism, previously seen as a cranky thing for eccentrics, has moved mainstream, and we now have the Green Party, other parties vying with each over the environment, and the UN and Earth Summits. The science of climate change has moved from being the science of a few to the science of main consensus. Environmentalism has come of age. Climate change has been a major factor, along with environmental disasters such as Chernobyl, Bhopal and Fukushima. While Government and editorial support for environmental issues ebbs and flows, things have got better.

How has the interface between environmental and criminal justice changed? Are, for example, agencies more prepared to take action?

I think we are getting better, and (agencies are) tougher and more transparent on, for example, pollution. When I first came to Scotland regulation was very secretive, inward looking and unproactive, with cosy chats being held behind the scene. This 'regulatory capture', changed with the creation of the Scottish Environmental Protection Authority (SEPA) and Scottish National Heritage with a greater commitment to more openness and chasing down environmental criminals. The other big change was the Freedom of Information (Fol) Act and, as SEPA now has an obligation to make all information available, it now has a database of pollutants and assessments of the performance of three to five thousand companies. There is more willingness to share information and a greater willingness to take on environmental criminals.

Governments have sought to make environmental justice tougher and more understood by the Procurator Fiscal, with training and conferences slowly bearing fruit. Fines are going up slightly although they are still not high enough. There are more attempts to take action against illegally killing birds of prey, not an easy crime to prosecute as the criminals are never there. In summary, the prospects for environmental justice have got better over 30 years. There is nonetheless a long way to go and difficulties remain, particularly for community groups and NGOs faced by big companies. A specific example relates to coal bed methane in Falkirk, where community groups are pitted against the expensive lawyers employed by Dart Energy, not a fair balance. Access to justice is still therefore in the balance.

A major part of your writing has been about nuclear power, what do you see as the main issues here?

I could talk about nuclear issues for hours. Over the long term things are better now. The nuclear industry is a tremendously powerful complex which started at the heart of government and was shrouded in secrecy, which remains the case. There is more transparency due to the FoI and the Office for Nuclear Regulation (ONR). There is however a major shortage of nuclear engineers. This, in the face of the deal done between the Government and the powerful French firm EDF in relation to building the new Hinkley nuclear power station, creates a risk that reduced resources and pressures will lead to a reduction of 'red tape'. ONR may become a less tough regulator than it needs to be.

While there has been more accountability in relation to civil nuclear power, the regulation of military nuclear power, including nuclear submarines, weapons and reactors, is a mess. While some information is available from ONR and SEPA, a large portion is regulated by the Defence and Nuclear Safety Regulator (DNSR), the most unaccountable and secretive regulator I've ever dealt with. After fights occupying months of my life, involving the Information Commissioner and the MoD, they have been forced to release annual reports. Having prised open MoD's secretive citadel a little, we have some knowledge of their concerns about submarine reactors, nuclear weapons safety and transporting nuclear weapons. They can't really be called a regulator, they are still within the MoD and regulation may involve ex MoD chaps saying to MoD chaps, 'you're doing fine chaps'. Despite MoD claims that this is proper regulation, there is no public guarantee that this is the case and the process lacks transparency. The UK is more secretive than the US, where Freedom of Information is part of the constitution.

How important is the involvement of private defence companies?

Military sites, such as Faslane and Coulport, are all run by defence companies, including Lockheed, on contract to the MoD. There is a declining number of MoD staff. This produces a situation in which, while the FoI forced more information from Government regulators, however long it may take - it took me eight months this year to get information about Health and Safety at Faslane - the introduction of private companies has made it more difficult again as they provide very little information.

Immunity from prosecution is a further issue, with the MoD still retaining crown immunity, although promising to act as if it doesn't. This is a concern for example, for SEPA. If they want the MoD to make improvements in the antique nuclear waste arrangements at Faslane, they have no legal powers to force them to do so. Crown immunity is one of those historical anomalies which needs to be looked at,

The Lord Advocate has recently outlined tougher strategies toward environmental crime. Can this make a difference?

Yes, it is very important that the criminal justice system gets on top of environmental crime which it has not been brilliant at doing both in relation to wildlife crime and pollution by companies. SEPA, faced by a reduced budget in the age of austerity, can do less monitoring. It has currently been targeting waste crime, working with the police on what is now seen as a 'big business' with links to organised crime, which, to their credit, they have exposed. There is a worry however that other things will slip through the net.

Do you think that, as in other areas of regulation, a lack of resources inhibits the prosecution of large companies?

This is a factor, although it can't be proved. In contrast to the relatively easy ride of prosecuting a small landfill offender, BP or Ineos might throw their best lawyers at them. SEPA is a smaller organisation than a lot of these companies and may be terrified of getting things legally wrong.

Could the courts do more?

The courts historically haven't seen environmental crime as seriously as perhaps they ought to. Killing birds of prey or polluting rivers may not be seen to be the same as assaults, physical harm or murder or robbery. Having said that, using the criminal justice system is not going to improve the problem in itself. It makes me uneasy for example when gamekeepers, not highly paid people, are put in prison, when the fault lies in the system and landowners, who condone them, never see inside of a cell. For large companies, you have to take lots of money off them but use it for public good. Companies have to realise that if they do serious pollution it will affect shareholders and the market value of their company.

I must mention that if you are looking for the grossest global example of environmental injustice this must be Bhopal, where around 25,000 Indians died and the water is still contaminated. The compensation offered by the Dow Corporation was 100 times less than that given to the victims of their faulty silicone breast implants. What does that say if you are an Indian? Someone I met there saw this essentially as environmental racism as the value of a life in India is just not worth the life of a citizen of the US.

Do you think that the Scottish Government can do something more radical than the rest of the UK?

It already has. The FoI is more radical than elsewhere in the UK, the environment is fully devolved, and there is arguably a stronger green presence in the Scottish Parliament. There is scope for doing these things better in Scotland.

What would be your priorities for the future?

I would take a really serious look at what you could do to make sure Faslane and Coulport are as safe as possible which would mean toughening regulation. Secondly, it bothers me that all the information that SEPA publishes on their pollution register is based on companies' and public agencies' own information. There is a need for more resources and more independent monitoring.



The Farmer as Environmental Criminal

Robert Smith gives a Scottish perspective

WHILST it is relatively easy to keep out ordinary, predatory criminals from farms and rural locations and thus control crime it is less easy to prevent insider type environmental crimes. The idea of the farmer as an environmental criminal is a relatively recent concept and a new addition in the typology of rural criminals: it remains a hidden category of rural criminality. Work in an Australian and U.S. context (see Barclay et al., 2007) documents and describes farm and farmer based environmental crimes, many of which are location specific and have cultural elements in their commission. Until recently, environmental crime was an overlooked and under researched category of criminological theory and research. Farmers as a group were treated with an elevated level of societal respect in line with the 'rural idyll' because of their position in the community (Somerville, Smith, and McElwee, 2015). The farmer simply did not fit the accepted social construct (nor the stereotype) of the urban based marauding criminal fraternity. Consequentially, awareness of the stereotype of the 'bad' farmer is not widespread. Environmental crime, particularly small scale instances of it were not always reported in the press, or other media, because it was not considered newsworthy.

However, in recent years there has been a rise in public interest and concern relating to ethical aspects of farming and rural life such as for example the ban on hunts and concerns over badger culls. Books such as *Farmageddon* (Lymbery, 2014) have raised public awareness of the potential cruelty of factory farming, and there is increased scrutiny from political and environmental activists through websites such as *Vermin Patrol* that name and shame individuals (including farmers) found guilty of animal cruelty and/or environmental crimes. Moreover, the work conducted by bodies such as SEPA and the Food Standards Agency has led to an increase in environmental surveillance. As a result, farmers are no longer immune from criticism, nor from prosecution and are part of an emerging typology of environmental criminals.

Towards a working typology of rural environmental criminals

This article reports on preliminary findings of an ongoing study, which, using documentary sources, aims to compile a data base of crimes, crime and criminal types and build a working typology of environmental criminals. It develops my previous research into rogue and criminal farmers in the UK (Smith and McElwee, 2013). As a result of initial readings it is possible to identify a number of obvious crimes, crime types and criminal types which fall into the environmental crime category including the disposal of waste, pollution and pest control methods.

The commission of environmental crimes may be entered into deliberately, or wilfully, by farmers for example, by releasing slurry, waste, or effluent into a waterway or recklessly spreading it on already saturated land. There may be pressure upon them to do this when a slurry tank is full and there is no other immediate solution. It may result from what insurance companies often refer to as an 'act of God' such as flash flooding, or even by mere accident. Irrespective of motive, or intention, the consequences can be disastrous for wildlife, and fauna. These different motivations and modus operandi are reflected in a working typology which would be helpful to the authorities in the investigation of such crime. To date, there are four obvious types that emerge from the literature:

- ❖ **The corporate offender:** This category pertains to farmers and owners of farm businesses or agricultural companies who manage their farms' pollution and environmental portfolios. Creating a corporate umbrella shields the farmer from personal liability as convictions accrue against the corporate body. There is no evidence from the initial reading that this category of offender is any more prolific, or careless, in relation to environmental crimes than private offenders. Lymbery (2014) reports on the existence of corporations in the developing world that deliberately flout environmental laws and routinely commit serious environmental crimes. These corporations hire security staff to keep the public and journalists at bay. Again we see cultural norms in play.
- ❖ **The private offender:** This category pertains to farmers who own, or rent their farms and operate as private individuals. They may be personally liable for any acts of deliberate, or reckless, acts in relation to environmental crime.
- ❖ **The trusted employee:** This category relates to managers, factors, farm labourers, ghillies, game-keepers, contractors, or wardens accused of committing environmental crime. Importantly, they act on behalf of the farmer or land owner during the course of their employment, and not of their own volition. There is often a vicarious responsibility on the part of the land-owner. Employees may act out of ignorance of the law, or on the basis of custom and repute. In some instances, they may not be aware of potential violations.
- ❖ **The urban marauder:** This category consists of an outsider type person -usually an organised criminal or business owner who targets rural areas and farm land for the purposes dumping industrial and household waste (known as fly-tipping) because it is easier and cheaper to dispose of it illegally than pay land-fill charges. In extreme cases this may also be toxic or chemical waste. The category also includes amateur and commercial egg collectors.

This diversity of crime type and modus operandi makes it difficult to accommodate environmental crimes under one rubric. Only those in category four are stereotypical criminals and it is often difficult for investigators to 'get their heads around' treating the other categories as criminal. Men in Suits and/or Wellington Boots simply do not conform to our socially constructed expectations of criminality.

Having considered the main types of person who commit environmental crimes it is necessary to consider types of crime encountered in a Scottish and UK context. The categories may sometimes be inter-related.

- ❖ **Fly tipping:** Is usually committed by the householder, or a third-party contracted to remove the waste material / items. In the latter case, the third-party offender will have been paid a low price (usually cash in hand) to dispose of the refuse which may or may not be party to the payment of a land fill tax. A high profile case in July 2014 reported by SEPA related to a large quantity of illegal building waste being dumped at a disused farm near Edinburgh Airport disguised as silage bales. It saved the criminals £60,000 in landfill charges.
- ❖ **Illegal dumping of toxic waste:** The disposal of such waste is heavily regulated and to reduce costs organized criminals, or unscrupulous businessmen, may contract to dispose of the waste in quarries or illegal landfill sites. Every 90 minutes of the working day in Scotland an illegal dumping is detected.
- ❖ **Poisoning wildlife / setting illegal traps:** This is normally committed by a farmer or employee to control / trap wildlife and in particular birds of prey (see Ian Thomson's article in this SJM). Again it can result from carelessness.
- ❖ **Destruction of nesting sites and hedgerows:** Involving birds, bats and other wildlife. Illegal hunting parties as a commercial activity are also prevalent. A high profile case in June, 2013 related to the destruction of White Tailed Eagle nest near Montrose.

One of the major issues to emerge from the research is that from an investigative perspective environmental crime in the UK or Scotland does not have a high profile, nor is it a high priority. There has been an erosion of rural policing skills and rural and environmental crimes are no longer routinely taught to an increasingly urbanised police service. This attitude needs to change. Nevertheless, despite the creeping withdrawal of policing services from the countryside (see Smith and Somerville, 2013) due to cost cutting exercises, the UK is still well served by Police Wildlife Liaison Officers in most areas. There is a pressing need to retain (and retrain for) endangered rural policing skills. A special illegal waste task force has also been set up (see article by Gayle Howard in this issue). Whilst this research is ongoing, when completed it will be of help to the authorities, the police and to other bodies tasked with enforcing rural and environmental crime.

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POLLUTION, 'CRIME' AND ILL-HEALTH IMPACTS

'Environmental crimes are increasingly affecting the quality of air, water and soil ... and causing uncontrollable disaster ... environmental crimes also impose a security and safety threat ... and have a significant negative impact on development and rule of law. Despite these issues, environmental crimes often fail to prompt the appropriate governmental response. Often perceived as 'victimless' and incidental crimes, environmental crimes frequently rank low on the law enforcement priority list, and are commonly punished with administrative sanctions, themselves often unclear and low (UNIERI n.d)'.

Andrew Watterson on the problems of effective control and regulation

THE Scottish Government recently introduced welcome new laws in 2013 to address environmental crime with on-the-spot fines of up to £40,000 and established an environmental crime multi-agency taskforce led by the Scottish Environment Protection Agency (SEPA). International environmental crime, the waste industry and large scale environmental degradation as well as fly tipping have all been examined (Scottish Government, 2013). However, this may simply be the tip of a much larger and very toxic 'rubbish dump' of pollution and just as crime knows no boundaries, neither does pollution.

Big crimes by big companies, some based in Scotland, merit close attention. Across the UK, the global financial crisis resulted in cuts in agencies that deal with pollution. Tackling large-scale corporate environmental crime, and ensuring corporate accountability in criminal courts, has proved exceptionally challenging because of the complexity of the laws, the power and resources of those multi-national companies that break the law to defend themselves, and the resources and time needed to prosecute such criminals. Holding the oil industry to account for instance for major failures that affected human health in work and wider environmental settings and corporate governance has proved very difficult (Woolfson and Beck, 2005). The BP Texas refinery explosion and Deepwater Horizon spills in the Gulf of Mexico tell the recent story of failure. If environmental agencies suffer budgetary and related staffing and resource cuts that affect monitoring and detection of pollution, it may be even harder to ensure that those breaking laws will be brought to book. Large polluters, shielded by both corporate lawyers and indeed meaningless forms of corporate social responsibility,

awards and tick-box paper oversight, all too often escape accountability, despite culpability.

There can be immediate and long-term threats for people living next to or near sources of pollution. The worst affected can be in communities and groups that are often, but not always, those most economically disadvantaged. Regulating and, equally important, enforcing effective controls over pollution where it is possible and technically feasible to do so is critical to protect these communities who may be faced with multiple deprivation - unemployment, poor built environment, low pay, ill-health, and contain the most vulnerable populations - the old, the very young, mothers and the sick. Environmental injustice occurs where people with the least power and money suffer most from environmental problems whilst having less of the Earth's resources and benefits (FOES, 2015). Those with the most power and money cause many of these problems by over-consuming and polluting the environment. The exact size of the Scottish environmental justice deficit is unclear but it looks substantial.

However, pollution, from many natural and manufactured chemical, biological and physical agents, can damage all of society. Global climate change from pollution will not avoid Scotland and will affect all. Pollution may also occur and build up over many years and possibly from many sources and sometimes with cumulative and insidious effects. These adverse effects can occur sometimes at astonishingly low levels. Endocrine disruptors and other chemicals can affect humans at parts per trillion. Their effects too may be long term, and even cross generational, and it is unclear that we have effective controls over them. Evidence indicates we do not and

there are international moves for bans. Other air, water, soil and food pollutants may have a wide range of adverse effects, for example leading to chronic and acute respiratory diseases, developmental diseases, reproductive effects and cancers, unless they are also tightly controlled or possibly prohibited.

Pollution, like drugs, may come from legal or unlawful sources. Undoubtedly legal sources in terms of deaths from air pollution can account for a large part of the human, social and economic burden. Industry and governments may breach some national pollution targets and exceed EU and WHO limits with relative immunity. There are often deep tensions between those who want to deregulate or ensure 'light touch' regulation of pollution with controls left to market forces, self-regulation and 'voluntary action' dominating, and those who want effective pollution control based on evidence and precaution and carried through, where necessary, by rigorous regulation and enforcement. Market failures may be overlooked or even condoned in international circles. Some argue, outside the UK, that regulatory agencies 'are intimidated and outgunned and quiescent in the face on industries' assault' and have carefully documented the failures to control corporate industry pollution with regard to climate change science, pesticides, endocrine disruptor research and lead levels in children (Michaels, 2008). Similar threats exist within the UK.

Scotland needs an effective environmental charter to protect its citizens from both licit and illicit pollution

UK Government research revealed in 2014 that an estimated 2094 deaths each year in Scotland can be linked to air pollution primarily, but not exclusively, from transport fumes and particles, and almost 22,500 life years lost (FOE-Scotland, 2014). No-one is held to account for these deaths. Far fewer deaths occur from road crashes and murders yet these merit criminal charges and long prison sentences. Governments have not been able to take effective action to ensure their own air quality targets are met and regulators and enforcers struggle to catch and deal with the big polluting offenders. This is sometimes because of the problems of identifying and monitoring multiple offenders who all contribute to air pollution over many years. Often the major pollutants remain invisible to the public - unlike paper litter or waste tipping that pollutes our landscape but only sometimes our bodies. Owners of these companies have ended up in courts and been convicted of relatively minor offences.

There are additionally examples across Scotland of industries and companies, such as coal extraction and asbestos manufacture, ceasing to trade and leaving a pollution legacy behind several generations later for workers and communities nearby. Some companies went bankrupt and have never been held legally accountable leaving others including taxpayers to pay for and clean up the pollutants left behind. This begs the question about the ability of government to ensure accountability and control of industries across and beyond their product and production lifecycles.

There are many more challenges now looming, especially for governments, with regard to dealing with pollution by big industries and large transnational companies. The consequences for Scottish public health and regulation will be considerable in relation to air pollution, energy policy and global climate change. These challenges will require high regulatory standards, European and indeed global collaboration, effective enforcement, meaningful financial sanctions in the courts and agencies at national and local level with adequate budgets, resources and staff. Pollution may damage our health in the short term but we should remember that in the long term it will also damage our economy too. Great play is often made by governments with an ideological agenda about the costs of regulation and red tape but relatively little is sometimes known about some of the costs of not regulating the environment. Indeed, polluters may be able to externalise their costs to be picked up by those exposed to pollutants, their communities, the NHS and government itself (Watterson and O'Neill, 2102).

Scotland needs an effective environmental charter to protect its citizens from both licit and illicit pollution. It would ensure citizens were fully informed about decisions and activities affecting their environment and could effectively participate in the decision-making process. It would also prioritise the health of individuals and communities over economy and trade considerations (WHO, 1989). With the Transatlantic Trade and Investment Partnership (TTIP) threatening regulation of chemicals, food and work environments, such rights look increasingly critical to help to prevent environmental crimes at source and at national and international levels. It would require well-resourced and well-staffed regulatory agencies capable of monitoring pollution over significant periods of time and enforcing laws that are powerful enough to hold big as well as small polluters to account with effective fines and other criminal penalties including imprisonment.

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MUCKING IN CARE FARMING AND REHABILITATION

Caroline Matheson

CARE FARMING is an alternative type of social service that is starting to grow in Scotland. A care farm is one that is used to promote the mental and physical wellbeing of people through the working of the land. Care Farming Scotland has been set up to support care farmers and promote the movement. The charity hopes to increase the number of farmers who wish to diversify into care farming and highlight the benefits of this type of service to politicians and commissioners in the public, private and third sectors.

Using farming to help fragile members of society is not new. When I was growing up on the family farm in the 1960s, my father hired people with learning difficulties and some who had been mentally scarred by fighting in the War. These men were valued by our family and did their jobs as farm workers very well. The advancement of agricultural technology and changes in farming policy resulted in a loss of employment for these people. Furthermore mental health institutions habitually had a farm as part of their estate and this was used as part of their therapeutic regime. These farms were closed down during NHS re-organisation with cost-savings invested in more acute service delivery.

The best reward is to see a client grow in confidence and self-esteem as they develop new skills and fit into the farming team

Care farming, social farming or Green Care is well established in parts of mainland Europe, in particular The Netherlands and Norway where health and social services have teamed up with agricultural departments to develop a framework for green care, contracting with farmers for a therapeutic service for disadvantaged citizens.

Care farming users can be from a varied backgrounds including: physically and mentally ill, adults with learning difficulties, elderly people, children with special needs, disaffected youth, long term unemployed, offenders, addicts and war veterans suffering from post-traumatic stress. For many of these people, mainstream schools, clinics, and day centres do not meet their needs. They respond much better to less formal surroundings participating in more meaningful activities. The concept of the restorative power of non-verbal communication with nature is widely acknowledged. Being removed from stressful environments and experiences in the tranquility of green countryside contrasts with grey concrete and can be a

healing experience, especially for city dwellers. Care farming offers this possibility along with learning opportunities and meaningful employment.

For farmers who have diversified into care farming the experience has been both challenging and rewarding. Attention to health and safety, public liability insurance and Disclosure checks have to be a priority. On the plus side, most care farmers will say that they enjoy hearing their client's stories and teaching them how to rear animals and tend to crops. The best reward is to see a client grow in confidence and self-esteem as they develop new skills and fit into the farming team. It is amazing to see a timid, anxious person start to assert himself or herself whilst 'hard men' can be soothed and humbled by working with animals and growing crops.

There are opportunities for care farming to grow in Scotland and this type of service may be useful in the rehabilitation of offenders. Some farmers may be interested in contracting directly with the prison service and others may offer to host a third sector body who will provide supervision and structure on the farm. However, it may take some persuasion to convince farmers to allow offenders on to their farms for fear of assault, theft and vandalism: good news stories will be key to getting a positive message across. Apex Scotland has already done some positive work, using farms and small-holdings to assist offenders to gain work experience and improve their self-esteem and social skills.

For me, (who has a background in the health service), care farming has been a rewarding experience. My clients, who have health and social difficulties have focused on health improvement and developing their employability skills, using the experience as a positive catalyst to improving their lives. All clients are assessed individually and together with a lead professional, we write a holistic, person centred plan focusing on what they want to achieve. For most, the intervention has been beneficial and has been a step towards work or other useful activity.

The potential for care farming to be a mainstream service in Scotland is thinkable and demands a collaborative and innovative approach at all levels. You just need to look across the North Sea to glimpse what is possible!

Caroline Matheson is development consultant, Care Farming Scotland.

For more information on Care Farming Scotland check the website www.carefarmingScotland.org.uk/

THE Scottish Environment Protection Agency (SEPA) is Scotland's principle environmental regulator, with a range of responsibilities. One of these is protecting communities by regulating activities that can cause harmful pollution and by monitoring the quality of Scotland's air, land and water. The waste industry is one of those regulated through permits, licences and exemptions, with strict conditions to protect the environment.

Scotland is currently working towards zero waste, meaning that all usable resources are removed and re-used, rather than being wasted. However, this approach has highlighted the problem of what happens to the waste that is left after all useful resources have been removed and recycled. It has no value left, and instead attracts disposal costs, which legitimate businesses will pay. Those less scrupulous will find ways to charge for disposing of the waste, without having to pay landfill gate fees, landfill tax and so on. When there is money to be made criminals can be very inventive, and this means that organisations such as SEPA have to be inventive in how they tackle the problem.

It's all very well to see an individual or company being fined, but by then the damage to the environment has already been done

To Willie Wilson, SEPA's National Operations, Waste and Enforcement Manager, it is important to tackle the root cause of the problem.

"There are people who will only look at the number of prosecutions as a measure of how well we're doing tackling waste crime, but that's only a very small part of the story. We do have cases working through the legal system at this very moment, but effort needs go into stopping it from happening in the first place.

"It's all very well to see an individual or company being fined, but by then the damage to the environment has already been done. A legitimate business has already lost out on a contract, a landowner or the taxpayer has already been left with a bill to clear up a site. The public purse has already lost out on revenue that could be spent on schools and hospitals. It's too late to fix it. What we're focussing on is ways we can stop the criminals getting that far, and while it's an area of work that is generally hidden it is a vital one."

SEPA's waste crime team was formed in December 2013, to lead investigations directed at tackling the most serious offenders, working in partnership with law enforcement agencies, such as Police Scotland, to identify and disrupt serious organised crime within the waste sector.

The importance of this is highlighted by the team's Unit Manager, Iain Brockie:

"Waste criminals adapt their behaviours and patterns to circumvent and evade environmental laws, and their actions are often invisible to traditional regulatory models and approaches. We know that as a regulator we need to enhance our skills and ensure we are adapting and changing to the new challenges this presents.

"The extent and complexity of the investigations required to tackle serious organised crime convinced SEPA that new specialisms were required within the agency. Enquiries are run by former police officers, who utilise the investigative techniques they were taught within the Police Service. This includes appointing a Senior Investigating Officer and a Deputy to drive and focus each enquiry."



World Wide Waste

Gayle Howard on how Scotland's environmental regulator (SEPA) is tackling waste crime at home and abroad

Since the team was formed it has undertaken eight complex investigations including the large scale illegal deposit of waste onto private land and illegal landfilling of mixed waste. Over 190 witness interviews have been carried out and in excess of 500 pieces of evidence have been seized. In addition, over 400 separate enquiries have been carried out and 38 formal notices have been issued to operators for a variety of issues.

The team has also succeeded in getting 15,000 tonnes of illegally deposited waste removed from one site, 700 bales of waste removed from another and they are in the process of ensuring an estimated 20,000 tonnes are removed from two other sites.

Within Scotland a major development has been the establishment of the Scottish Government's Environmental Crime Taskforce (ECTF), by Richard Lochhead, Cabinet Secretary for Rural Affairs and the Environment. It is chaired by SEPA's Executive Director, Calum MacDonald. With membership including the Association of Chief Police Officers in Scotland, Crown Office and Procurator Fiscal Service, Scottish Government, SEPA, the Society of Local Authority Chief Executives and Senior Managers (UK) and Zero Waste Scotland, experts are tasked with supporting the delivery of the Scottish Government's commitment to tackling environmental crime. The first ECTF conference was held in Edinburgh in November 2014 to bring together interested parties from across Scotland, the UK and Europe, to discuss the problems and look at ways to tackle them.

SEPA is working closely with Police Scotland and other partners to map the presence of waste crime groups operating in the Scottish waste industry. As part of this collaborative approach we now have officers embedded in the Scottish Crime Campus at Gartcosh. This will enable better information sharing, which is essential to tackle this threat. In addition, SEPA is now participating in two sub-groups of the Serious Organised Crime Taskforce in Scotland: this demonstrates the importance of our knowledge and experience.

One of the areas highlighted as a particular concern at the ECTF Conference was limitations in procurement rules, which may not stop contracts being awarded to companies that are involved with organised crime. SEPA and Zero Waste Scotland have launched a consultation with the independent consultancy Eunomia, seeking to supply guidance to the public sector about how to identify best practice.

To ensure that the organisation continues to stay ahead of the criminals it has also been exploring whether there are opportunities for academic research to identify potential measures that could be used to for waste crime assessments.

Within the UK, SEPA works closely with staff from other regulatory agencies. Recently staff from the Northern Ireland Environment Agency (NIEA) met with SEPA's Enforcement Support Team to exchange best practice on development and the use of intelligence models.

Waste is an international commodity, which means waste crime is an international problem. As a result SEPA's work and influence extends far beyond Scotland's borders, and it is leading some important European projects.

For environmental and partner bodies, there are big gaps in understanding how illegal markets behave and how to tackle criminal behaviour. This poses major challenges, but also opportunities for innovation, which is where the LIFE SMART Waste Project comes in.

Cath Preston, a Principal Policy Officer in SEPA, is leading the project, which is funded through the European Commission LIFE Programme.

"The project, which is led by us, will also involve Natural Resources Wales, The Association of Cities and Regions for Recycling and sustainable Resource management (ACR+) and the Brussels Institute for the Management of the Environment. It will allow us to improve our understanding of how illegal waste markets and criminals behave, enabling environmental bodies to set intelligence objectives around shared areas of concern, then work together identify and tackle illegality."

SEPA has also been co-ordinating the transfrontier shipment of waste (TFS) flagship Enforcement Actions project for the European Union Network for the Implementation and Enforcement of Environmental Law (IMPEL) since 2011 (see also Bisschop on page ?). The project seeks to maintain and improve the network of front line waste shipment inspectors, inspection methods, exchange of information and inspectors' knowledge on the Waste Shipment Regime.

Katie Olley, Senior Environment Protection Officer in SEPA, explains:

"Co-operation with other regulatory authorities continues to develop within the project. It focuses on the importance of cross-border and regional cooperation, with joint inspections and officer exchanges fostering this. Officers from newly participating countries benefit from the expertise of other countries with established teams.

"Participants share their experiences with their project colleagues by emails, news messages and in webinars. The webinars help to exchange best practice and make authorities aware of the procedures and evidence needed in different jurisdictions. Participants are encouraged to disseminate their experiences in their own countries."

Serious waste crime is a material threat to the health and prosperity of Scotland's natural environment, the wellbeing of our communities and the continuing viability of our waste management sector. But, the routes open to criminals will be reduced, as new projects bring together law enforcement agencies, regulators, governments and industry representatives to raise awareness and explore intervention opportunities and preventative actions.

Gayle Howard is SEPA's communications officer.

European Union Network for the Implementation and Enforcement of Environmental Law <http://impel.eu/>

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GEAR CONFLICT IN THE SCOTTISH INSHORE FISHERY

Nick Underdown asks is there a legal solution?

IT TOOK JUST A WEEK. On the lumpy grey water of a Scottish west coast sea loch, the skipper of a twin-rigged trawler towed weighted nets across the seabed for prawns for six days. As a result, two fishermen, fishing in same area for the same prawns, lost several thousand pounds worth of gear: creel pots, buoys and ropes snagged in the trawler's net and towed away, most probably to 'ghost fish' for over a year. Within months the two creel fishermen decided not to replace their gear and soon gave up fishing, and so in a village that in recent memory supported over a dozen local boats, only five now remain. No-one was prosecuted or compensated for what happened.

This is not an isolated incident. 300 fishermen responding to a recent survey, the first of its kind in Scotland, collectively declared annual financial costs amounting to £1.2m as a result of what is known within the industry as 'gear conflict' (Riddington et al., 2015).

Inshore complexity

It's a complicated problem. Fishermen are competing for space and often for the same target species. Scotland's inshore waters (0-12 nautical miles) are fished using many different gear types. 'Mobile' fishermen, such as demersal whitefish trawlers, prawn trawlers and scallop dredgers, use gear that is actively moved across the seabed or through the water column. 'Static' fishermen use gear such as shellfish pots, creels or baited lines deployed in fixed positions on the seafloor.

Over two-thirds of the 2,020 active fishing boats in Scotland are small boats (under 10m in length) and the majority (88%) of these deploy static methods of fishing (Scottish Government, 2014). However, the mobile fleet accounts for the majority of fishing power. With fewer boats Scotland's mobile fleet catches many times the volume of prawns landed by static fishermen although much is of unmarketable size and discarded; creel-caught prawns command a higher market value. Nonetheless 'gear conflict' takes a variety of forms. Although the majority

of reported incidents in 2012 were 'mobiles' damaging 'static' gear (58%), some of the damage was caused by static-on-static (21%) or static-on-mobile (16%) conflict. The conflict ranges from accidental snagging of gear that forces fishermen to damage nets and ropes when disentangling, to accusations of deliberate vandalism, such as mobile boats raking through areas already known to contain fixed creels to access scallop beds and areas rich in prawn burrows.

In the past 30 years there has not been a single successful prosecution for actions relating to gear conflict

Limits of the criminal law

This conflict has affected the Scottish inshore fishery for decades and yet successive administrations have failed to resolve it: in the past 30 years there has not been a single successful prosecution for actions relating to gear conflict.

One reason is that gear conflict is not a fisheries offence. The best-known fisheries crimes, such as the notorious 'blackfish' cases (successfully prosecuted in 2012), involved breaches of well-drafted fisheries legislation designed to prohibit landings of non-quota fish. It enabled Marine Scotland Compliance, the government agency responsible for fisheries enforcement, to pursue those fiddling the supply chain, including one processor that siphoned off £47m of illegal profits (HMA v Shetland Catch Ltd, 2012). Although Fishing Orders penalties are limited, the elaborate scams involved such large sums that further fines and confiscation orders were issued under the Proceeds of Crime (Scotland) Act 1995.

Gear conflict cases are different. Deliberate damage to fishing gear - vandalism and theft - are common law crimes, not fisheries offences, so redress must be sought via Police Scotland. Eye-witness accounts from different positions on the shore are

difficult to corroborate and there is no statutory provision for a strict liability offence that covers the range of actions that lead to damage of fishing gear. Non-specialist investigating officers do not have the expertise and resources to gather admissible evidence for a watertight case. In the majority of reported incidents, the Procurator Fiscal has no choice but to drop proceedings. The very few cases that do progress to court have faltered due to insufficient evidence or deficiency of knowledge about fishing in Scottish summary courts.

Not only do potential victims consequently have little confidence in the court system, there is anecdotal evidence of 'under-reporting' due to a culture of intimidation. In smaller coastal communities where people know each other's business, the prospect of visible police enquiries at the quayside can be enough to dissuade some from reporting. The author is aware of instances where fishermen have chosen not to report an incident, fearing retaliatory acts of gear vandalism.

Taking a more civil route?

The Scottish Government established a Gear Conflict Task Force in 2013: recommendations include exploring vessel tracking technologies; targeted surveillance and time or spatial management in gear conflict black spots; and to consider voluntary codes of practice being integrated into the fisheries licensing system (Scottish Government, 2014a). The devil will be in the delivery detail: licensing routes could lead to a three-strikes-and-out approach to infringements, with complainants accepting the ruling of an internal panel judging incidents on a balance-of-probabilities test, as compared to proof 'beyond reasonable doubt' in criminal courts. Powers of Marine Scotland Compliance to temporarily revoke access to fishing grounds would likely have a strong deterrent effect. Provisions under the Inshore Fisheries (Scotland) Act 1984 could deliver more straightforward closures. In any event, these solutions would start to "bring the matter within the scope of Marine Scotland's enforcement and compliance remit" and start plugging the justice system's competency gap.

With just three fishery protection vessels and two aircraft, it remains to be seen whether the Scottish Government is able to collect evidence required to meet even civil standards of proof. Consideration of innovative technologies will be vital to the enforcement of any spatial management proposed.

The report contends that any solutions should be proportionate to the scale of the problems being experienced. This is a valuable observation, because the extent of the problem is simply not known. There has been no systematic attempt to record instances of gear conflict anywhere in Europe (Kaiser, 2014), and the Scottish survey's low response rate leaves it susceptible to criticisms of response-bias.

Furthermore, the problem has been assessed in a very basic way, with no analysis of the impact such conflict (and in all probability crime) is having on the health of already low-margin businesses, or indeed the local economies in which they operate. Fishermen invest a significant proportion of their outlays in gear and are unable to insure it against theft or damage, so when gear is lost, without reparative damages through the court, the cost is borne directly by operators.

A few boats going out of business can have cascade effects for a whole community. Tackling the problems identified by

the task force's report could therefore be more urgent than currently assumed. Gear conflict can no longer be treated as a 'neighbourhood dispute.'

The bigger picture

The taskforce also recommends that Marine Scotland should "not look at gear conflict in isolation." Gear conflict is a symptom of a much bigger problem: the management and underlying health of the inshore fishery. Once booming with mixed whitefish stocks, the inshore fishery is now prosecuted mainly for its shellfish - the scallops and prawns which are targeted by both static and mobile methods. Amidst debate about the multiple causes of the whitefish decline, few deny that fishing itself played a contributing role.

Towing heavy, bottom-weighted nets and toothed rakes along the seabed has undoubtedly damaged seabed habitats that sustain all fishermen. One consequence is that creel fishing has moved further out and trawling has moved further in creating more competition for ground.

Encouragingly, damage to the seabed is increasingly recognised as a problem. Later this year activities that once constituted legitimate fishing activity will become illegal in certain Marine Protected Areas (MPAs). Under the Marine (Scotland) Act 2010, Scottish Ministers have a duty to use MPAs to protect marine features, including seabed habitats, from pressures such as mobile fishing gear. Fishermen, the majority of whom recognise the need to look after the seabed, have been cautiously supportive of these conservation measures.

Yet MPAs are no substitute for fisheries management measures: some fishermen are concerned that MPAs may displace fishing and increase gear conflict elsewhere. A more fundamental revision of management involving spatial separation, as practiced in equivalent Scandinavian countries, is therefore likely required to properly tackle gear conflict.

The Lord Advocate has in the past urged for careful consideration of the public interest when pressed on gear conflict. The real 'crime' in Scotland's fisheries will be to allow the status quo to prevail.

Nick Underdown is marine policy and engagement officer for Scottish Environment LINK. Any opinions expressed or implied are not those of his employers or member organisations.

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THE ILLEGAL KILLING OF BIRDS OF PREY IN SCOTLAND



Ian Thomson gives the RSPB's perspective

THE RSPB SCOTLAND INVESTIGATIONS UNIT exists to provide expert assistance and support to police, the Scottish Government, the Crown Office Procurator Fiscal Service and other authorities in assisting the detection and prosecution of wildlife crime offenders. It plays a key role in monitoring wild bird populations and identifying potential 'problem' areas on the ground, receives reports of potential incidents from members of the public, and exchanges secure information with the police and National Wildlife Crime Unit. RSPB Officers have no statutory powers, but have a long-established expertise, and are frequently asked by the police and others to contribute that to complex criminal investigations.

Scotland's birds arguably have some of the best legislation aimed at their protection of any country in Europe. Since devolution, the Wildlife and Countryside Act (1981) has been strengthened by both the Nature Conservation (Scotland) Act in 2004 and the Wildlife and Natural Environment Act 2011. Despite this, however, the illegal killing of birds of prey continues to be a significant conservation issue, threatening the abundance and range of several species, as well as damaging Scotland's reputation as a country that safeguards its wildlife.

One of the main reasons that the killing of our protected raptors has continued, seemingly unabated despite our very good laws, is that the odds are still stacked against the perpetrator being brought to justice. But just how common are these crimes?

Firstly, we can only deal with incidents that have actually been discovered. It is impossible to say what the number of actual incidents is: all that can be said is that the number detected is an unknown proportion of those crimes that were really carried out. Those criminals undertaking the illegal killing of birds of prey are not wishing to be caught; hence these activities are carried out in remote areas where they are likely to remain undetected, in areas rarely accessed by the public and where evidence can easily be concealed or destroyed by the perpetrators.

Secondly, the search effort to uncover criminal activity related to raptor persecution is entirely ad hoc. Most victims are discovered by chance, by walkers, birdwatchers or others enjoying the countryside. Some victims have been found because they have been fitted with radio transmitters or satellite tags. Others have been discovered during organised searches, led by the police, in investigating previous incidents. With a highly variable search effort, making comparisons of the number of incidents from year-to-year is flawed.

Over the last thirty years, the RSPB has recorded all known incidents of wildlife crime targeting birds of prey, whether it is by poisoning, shooting, trapping or nest destruction and Science and Advice for Scottish Agriculture (SASA) has produced annual reports documenting poison abuse cases for many years. Other forms of raptor persecution have only been reported on formally by the Scottish Government, since 2012. Prior to this, there was no coordinated central record of these incidents.

The RSPB (2015) dataset provides the only long-term, complete record of these offences presenting a clear picture of the widespread, deliberate and systematic killing of some of our most iconic and vulnerable species. While we cannot suggest that such persecution is declining or on the increase, given the caveats outlined above, it is readily apparent that the illegal killing or targeting of raptors continues and is widespread in Scotland.

During 1994-2013, almost 750 birds of prey are known to have been illegally killed. Of these incidents, birds confirmed as being the victims of illegal poisoning accounted for 60% of the total, with a further 21% of victims shot. Depressingly, victims of poisoning alone during this period included 27 golden eagles and 78 red kites.

Scottish Natural Heritage (2008) argues that 'illegal persecution of eagles, principally associated with grouse moor management in the central and eastern Highlands', is imposing a significant constraint on the population. With regard to red kites, this species has been reintroduced, following extinction because of sustained killing in Scotland throughout the 19th century, but in some areas it is clear that these 'new' populations are apparently suffering from the same Victorian attitude towards anything with a hooked beak that led to their eradication 150 years ago.

Such crimes are seldom witnessed, so when a victim is found, the statutory investigating agencies are dealing with situations where recovery of forensic evidence is difficult. It is little wonder that only in a small proportion of cases is a suspect identified, let alone does a prosecution result. Even then, it is often for another offence, such as possession of an illegal poison found in the course of a follow-up by the police, rather than that of causing the death of the victim. The penalty imposed for such an offence is usually lower than if the latter had been proven.

In the last few months, however, there have been two significant convictions, welcomed by all of those involved in the fight against raptor persecution.

Scotland's birds arguably have some of the best legislation aimed at their protection of any country in Europe.

In December 2014, Galloway landowner Johnston Stewart became the first person prosecuted under vicarious liability legislation (section 18A of the Wildlife and Countryside Act 1981). At Stranraer Sheriff Court he plead guilty to being vicariously liable for crimes committed by his gamekeeper, namely: poisoning a buzzard, and having possession of prescribed pesticides and was fined £675. A six-figure sum from his Single Farm Payment subsidy for breach of Statutory Management Requirements (SMR's) aimed at ensuring land is maintained in good environmental condition, had already been withdrawn. While there was no suggestion by the prosecution that Johnston Stewart instructed the commission of the crimes carried out by his gamekeeper, or that he was aware the offences were taking place, the court heard that he had not acted with due diligence regarding the running of the pheasant shoot on his estate.

On 12 January 2015, Aberdeenshire gamekeeper George Mutch was given a four month prison sentence, after being convicted of a number of charges related to the illegal use of traps and the killing of a protected bird of prey. The offences came to light during the review of footage captured by video cameras deployed by RSPB Scotland, as part of a project monitoring the use of crow traps, on the Kildrummy Estate in August 2012.

During the trial, it was heard that Mutch was filmed placing an illegal Jay decoy in a Larsen trap; killing a goshawk that was subsequently caught in the same trap; illegally taking a Buzzard in the same trap by failing to release it immediately; and illegally taking a Goshawk in a second trap by failing to release it immediately. Despite a challenge by the defence agent that the video evidence should be deemed inadmissible, Sheriff Noel McPartlin ruled that the footage illustrating the offences had been obtained as a by-product of a legitimate research project, and therefore could be used as evidence in the trial.

While maintaining his not guilty plea, Mutch, who had been a gamekeeper on the estate for twelve years, accepted that the film showed him using the Jay decoy, killing the goshawk, and bagging and removing the second trapped goshawk and the buzzard. He claimed that he had used the decoy in a bid to catch Jays that were eating food placed out for pheasants, that he had euthanised the goshawk because it had an injury to its beak, and that he had taken the second goshawk and the buzzard and released them some distance away from his pheasant pens.

Sheriff McPartlin, in announcing his verdict, said that Mutch was not a credible witness, described his attempt to justify the killing of the goshawk as 'a convenient lie' and added that that he was 'far from convinced about the fate of the buzzard and the second goshawk'. At sentencing, the Sheriff said that 'raptor persecution is a huge problem and offending is difficult to detect' and that 'a deterrent approach was appropriate'.

As mentioned earlier, these convictions are significant in that Johnston Stewart was the first landowner prosecuted under the 'new' vicarious liability legislation, while Mutch became the first person given a custodial sentence for the illegal killing of birds of prey.

RSPB Scotland welcomed these convictions and commends the work of Procurators Fiscal Kate Fleming and Tom Dysart respectively in securing these results. It can only be hoped that such verdicts send a clear message that those who continue to kill Scotland's birds of prey, or allow, by their inaction, the illegal killing of protected species, are likely to face prosecution, and may end up in prison. Landowners need to make sure their employees are not just aware of the law, but are complying with it.

Ian Thomson is head of investigations, RSPB Scotland.

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TIME TO GET AARHUS IN ORDER

Mary Church on access to justice in environmental matters in Scotland

10 YEARS on from the ratification of the *Aarhus Convention on Access to Information, Public Participation and Access to Justice in Environmental Matters*, the UK remains in breach of provisions under its third, and perhaps most important, pillar requiring legal remedies. The *Aarhus Convention* recognises that protection of the environment is essential for the prosperity - and simply continuation - of our life on earth and introduces rights and responsibilities to that end. *Aarhus* is about enabling decision-makers to make better decisions in the context of the environment we depend on. It involves people and communities in decision-making, enables us to speak out on behalf of the environment and puts a duty on citizens to act in its defence. Without that credible threat of legal action, as enshrined under pillar III, there is little or no fear of sanction for public bodies, developers and other decision-makers bound by public participation requirements and environmental law, and therefore less incentive to act fulsomely on these.

Cases such as *McGinty vs Scottish Ministers* illustrate a number of the barriers that individuals and communities face both when trying to exercise their rights to participate in decision-making and in attempting to give the environment a voice in court. Mr McGinty, a local bird watcher, and his community, learned of the inclusion in the National Planning Framework 2 (NPF) of a new coal fired power station at Hunterston that would destroy the SSSI (Site of Special Scientific Interest) he visited daily, at a public meeting

only after that decision had been taken. Designation as a national development under NPF removes the right to object on grounds of substance and principle to the need for a development during the subsequent planning process, effectively limiting input to relatively minor considerations. The coal plant had not been part of the main NPF consultation process, but included as a national designation at a later stage and only then subject to short of seven weeks consultation by way of supplementary Strategic Environmental Assessment, advertised in the *Edinburgh Gazette*, not locally.

In September 2009 Mr McGinty took Scottish Ministers to judicial review on the grounds of inadequate consultation under the SEA Directive. In January 2010 the petitioner was awarded the first ever Protective Expense Order, capping his liability at £30,000. Leaving aside his own estimated costs at upwards of £50,000, McGinty no doubt balked at his exposure under the PEO alone. It is hard to see how these expenses could ever be viewed as anything other than 'prohibitively expensive'. Mr McGinty lost his case on the grounds of standing - subsequently overturned on appeal following the introduction of 'sufficient interest' by *AXA General Insurance vs Lord Advocate* - and *mora* (delay in taking the action). Both Lord Brailsford's initial opinion (despite his reluctance to get into the merits of the case) and that of the Inner House on appeal additionally made it clear that they considered Scottish Ministers had lived up to their obligations under SEA.

It is hard to think of a case that better demonstrates the failings of the Scottish system to comply with the spirit of the *Aarhus Convention*. Setting aside the important matter of SSSIs and birds for a moment, the gross contradiction of a Government recently committed (with full Parliamentary backing) to rapid and essential greenhouse gas emission reductions subsequently committing to the construction of a coal fired power plant that would render it near impossible to meet its legally binding climate targets, was also at stake.

Last summer in Maastricht parties to the *Convention* upheld the findings of the Aarhus Compliance Committee that the UK had failed – once again – to comply with the requirement that access to justice in environmental matters must not be ‘prohibitively expensive’. Unlike the February 2014 ruling of the European Court against the UK for failure to ensure that access to justice under the Public Participation Directive is not prohibitively expensive, the decision of the Compliance Committee takes account of the recent improvements in cost limitation in all UK jurisdictions yet still finds the regime wanting. While the Aarhus Compliance Committee has fallen short of finding against the UK in respect of the Convention requirement for substantive review, the process focused judicial review of the Scottish system is arguably less compliant than the regime south of the border.

The response to the urgency and enormity of global environmental challenges like climate change require re-thinking of all of our institutions

The Scottish expenses regime may have escaped the level of scrutiny our neighbouring jurisdictions have been subject to, as the recent European Commission infraction proceedings were triggered by cases from England and Northern Ireland. Again however, the Scottish system is more badly in need of reform. Under the current system, most *Aarhus* cases will be heard by way of judicial review. Judicial review can, of course, be enormously expensive. Codification of rules of court on Protective Expense Orders came into force in March 2013, in response to the EC infraction proceedings, despite protestations from the Scottish Government of full compliance with the Directive. While the rules are a significant improvement on the previous regime they are far from perfect. Petitioners’ exposure to expenses is limited to a downwardly flexible £5,000 in cases under the scope of the Public Participation Directive; broader *Aarhus* cases will be treated under the common law regime that saw fit to award caps of £30,000 in *McGinty vs Scottish Ministers* and £40,000 in *Walton vs Scottish Ministers*. Furthermore, only individuals and NGOs promoting environmental protection are eligible for a PEO under the rules, community groups are not.

Cuts to legal aid aside, Regulation 15 of the Civil Legal Aid Regulations has for many years acted as a particular barrier to applicants seeking financial assistance in environmental cases. The rule strongly implies that a private interest is not only necessary to qualify for legal aid, but that a wider public interest – practically inherent in most environmental challenges

– will effectively disqualify the applicant (McCartney 2010). The recent introduction of caps on legal aid at an unrealistic (for a complex judicial review) £7,000, along with new three-month time limits to bring a review, will only serve to exacerbate barriers, with individuals and communities unfamiliar with their rights and legal processes struggling not only to identify where a problem might have a legal solution, but to organise, fundraise and access necessary advice in such a short time frame.

Recent rulings of the European Court of Justice have made it clear that the ‘prohibitive expense’ requirement applies to all costs associated with taking legal action (*R Edwards v Environment Agency* C-260/11). An individual taking legal action in a public interest *Aarhus* case, who fails to qualify for legal aid, but secures a PEO, is still faced with considerable – prohibitive, in the view of Friends of the Earth – expense. The new rules of court impose a cross cap at £30,000 implying that this is the sum a petitioner can expect to incur for counsel, solicitors, court fees etc. Setting aside the fact that this may be a considerable underestimate for complex environmental judicial reviews, the rules assume that the prospect of paying out £35,000 if one’s case is not successful, is not prohibitively expensive. Given that that sum is considerably higher than average Scottish earnings, and that deprived communities tend to suffer from the brunt of poor environmental decision-making (SNIFFER 2005), the new cost regime is clearly in need of further reform.

The Scottish Government’s plan to consult on options for an environmental court or tribunal this year presents a welcome opportunity to consider a more holistic approach to *Aarhus* requirements instead of responding piecemeal to infraction proceedings and Compliance Committee decisions. While the recent announcement by the Lord President of a review into an Energy and Natural Resources specialist court indicates recognition of the complexity and high value of certain environmental issues at stake, to limit reform to the Court of Session may be to miss much of the opportunity before us.

The response to the urgency and enormity of global environmental challenges like climate change require re-thinking of all of our institutions. The environment and the communities who live with the consequences of poor environmental decision-making must be at the centre of Government thinking to better understand what is needed to create an accessible tribunal with a level playing field for people and developers. A fair, accessible system, balancing the needs of communities with the pressures of development, and enabling citizens to act on their duty to protect the environment, is not just a legal requirement under *Aarhus* but an absolute necessity in this age of increasing environmental precarity.

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‘Litigation over the Environment: an Opportunity for Change’, a new report by Frances McCartney, commissioned by Friends of the Earth Scotland is available at www.foe-scotland.org.uk/litigationovertheenvironment

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Fair enough

Marguerite Schinkel on long-term prisoners talking about their sentence



LONG-TERM (over four years) imprisonment is, after life imprisonment, the most serious sentence that courts can impose in Scotland. Despite this, we know very little about how people who are imprisoned long-term think about their sentence. Much more is known about the lived experience of other interventions that aim to change behaviour (as prison sentences do at least in part): for example, smoking cessation and physiotherapy. Compared to these, criminal punishment is much more loaded. Imprisonment happens when someone has done something 'bad' and, in the opinion of the court, deserves to be punished. This might be the reason prisoners' perspectives on the fairness, purpose and efficacy of imprisonment has been largely ignored. However, how someone sees and copes with their sentence might well affect their behaviour while in prison and after release. This article summarises a research project that aimed to understand long-term prisoners' views of their sentence, and the implications these views had for their wider lives, and vice versa (for a fuller discussion see Schinkel 2014a). 27 male long-term prisoners were interviewed: six at the start of their sentence, 12 towards the end of their time in prison and nine on licence (or parole) after release.

With very few really committed to their offending lifestyle, most were angry that, instead of individual attention, they were treated as one of a large, undifferentiated and undeserving mass of people

Purpose of the sentence

Most of the men were really only able to make sense of their sentence if it aimed to make them less likely to re-offend in the future (rehabilitation). Those who were imprisoned for their first offence (death by dangerous driving in both cases) and had had conventional lives up until then, acknowledged that they needed punishment, but found it difficult to see what their years in prison were meant to achieve. Despite the widespread wish for rehabilitation, the men were almost unanimous in their dismissal of group based cognitive behavioural courses as the best way to go about this. They felt more individual attention was needed, as well as more practical support, to allow them to change their lives around. With very few really committed to their offending lifestyle, most were angry that, instead of this individual attention, they were treated as one of a large, undifferentiated and undeserving mass of people.

Fairness and justice

Along with the anger about rehabilitation unachieved, many of the men also felt that there were problems with their sentence. Some maintained their innocence, while others felt that the court did not have the standing to judge them (given their disadvantaged backgrounds), that the law was unjust or that the sentence was too long. Surprisingly, these feelings of injustice were almost always neutralised by those at the end of their sentence or on licence. Some adopted a 'general guilt' approach to evaluating fairness, saying that they had committed other offences which had gone left unpunished, or would have done so in the future. This neutralisation was driven by the pressures of coping with the prison environment. In order to survive a long-term sentence, it was much better to 'put your head down and get on with it' than to keep a sense of unfairness alive. Once appeals had been lost, there was no gain in an ongoing

fight against inevitable, unopposable imprisonment. Instead, the best strategy was to 'keep your head inside the walls' - trying to avoid thinking about family and friends outside and accept the prison as a whole life-world for the duration of their incarceration. This made their confinement much easier to bear, as they were seldom confronted with what they were missing. Research in other prisons and jurisdictions has found much more oppositional prison coping strategies (for example, Liebling et al., 2011), so it is likely that the intentional limiting of their horizons described by the men I spoke to was an adaptive strategy only because the prison in which they lived was relatively safe and 'busy' with many activities on offer. It did mean, though, that the men's general acceptance of their sentence was a result of the need to cope, rather than the justice of their sentence, and that the link between crime and punishment was largely left unexamined for most of their time in prison (see Schinkel, 2014b).

Several credited their social worker with motivating, supporting and, in some cases enabling them to stay away from crime

Life after prison

The men on licence were experiencing the drawbacks of coping with imprisonment by cutting themselves off from the world outside. Most described themselves as 'institutionalised' and found it difficult to re-integrate into normal life. Opening up to loved ones and supporting them in turn was a challenge after years of isolation and several said that they missed their life in prison at times. This, and other aspects of institutionalisation, were compounded by a sense of surveillance: having a history with police officers 'who might be out to get them one more time' and being on licence made many of the men feel very vulnerable to being returned to prison. Not ascribing much control to themselves in difficult situations, almost all the men avoided offending by avoiding the world at large and spent almost all their time inside their own homes. This was compounded by their inability to find new, meaningful, activities. Most aspired to employment, but their criminal record (which they would have to disclose for the rest of their lives) meant that employers rarely shortlisted them for interview and none had had any job offers, despite many trying for years. Their inability to work towards their goal of a 'normal' life (and a new identity as 'working man') was very frustrating and meant that some of the men were beginning to give up hope. The lack of work also affected relationships, with some cohabiting partners asking those on licence to move out, so that they would no longer need to be supported financially. Some of the men described relapses, but none had been re-imprisoned despite the high levels of surveillance, so they were managing to desist in the sense that they were not offending (seriously). However, they were not desisting into something; they led rather empty lives in which nothing had taken the place of the things that filled many of their lives before their imprisonment and which they now had to avoid in order to remain free: co-offending friends and associates, drugs, alcohol, excitement and offending.

Implications for practice

The Scottish Prison Service is already making moves towards a more individualised regime for prisoners. In several prisons, personal officers now accompany prisoners throughout their time in that prison, from induction to release (and hopefully in the future, also after release). This means that these officers have a chance to get to know prisoners and their needs, and to provide help at the right time and with the right issues. However, for this to work, there will need to be a greater variety of resources and interventions on offer: the SPS can no longer rely on a restricted number of cognitive behavioural courses to deliver rehabilitation. Another task for the SPS and its staff, along with policy makers and judges, is to reduce the extent to which men cut themselves off from the world outside while imprisoned. In order to support desistance, it is necessary to increase the permeability of the prison walls, so that prisoners remain engaged with, and are better able to cope with returning to, their lives outside. One option would be to allow much more extensive contact with family and loved ones, for example through prisoners having phones in their cells, so that family members can take the initiative in seeking contact. As this would make sentences arguably more painful, as prisoners would be regularly confronted with their physical separation from family, their length might also be reduced, further reducing the impact of institutionalisation.

Within the community, the relationships of the men with their criminal justice social workers were almost exclusively positive. Several credited their social worker with motivating, supporting and, in some cases enabling them to stay away from crime. However, social workers were seen as having very limited powers to help them to achieve their goals, especially employment. This meant that many felt left in the lurch; they had the basics they needed (such as accommodation, benefits and support with their addiction issues where relevant) but were left to their own devices to build up a life, despite their ability to achieve this being limited. A change in the Rehabilitation of Offenders Act (1974) is needed so that at least some jobs (ones that require little trust) are available to ex-prisoners in the first few years after their release, with this increasing until they no longer need to disclose their offending history for any job after several years of desistance.

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The right to vote

'Prisoners voting, South Africa, 1994' (Andrew Coyle)

Albie Sachs and **Andrew Coyle** discuss prisoner voting rights in South Africa and their denial in the UK.

IN DECEMBER 2014 Justice Albie Sachs, formerly of the South African Constitutional Court and a key figure in the long struggle against apartheid, gave the Nelson Mandela - Oliver Tambo lecture at Strathclyde University. In questions following the lecture, Professor Andrew Coyle asked about prisoner voting rights in South Africa. This is a note of the exchange recalled recently by Albie Sachs.

Andrew: "I remember being with you 20 years ago at the first gathering in South Africa of the African Society of International and Comparative Law, when you told me how you had convinced your fellow drafters of the South African Constitution that universal adult suffrage should indeed be universal and that prisoners should not constitutionally be denied the right to vote. You said that one of the comparisons you had used to advance your argument was that prisoners in the United Kingdom had the right to vote. You later discovered that was not the case and it is still not the case. Do you ever regret the fact that persons who are in prison in South Africa retain their right to vote?"

Albie: No, I don't regret it at all. I'm amused that I mistakenly assumed that the UK, the land of the Magna Carta and tolerance, would automatically place itself with those nations that saw imprisonment as being about depriving

offenders of their liberty and not about crushing their souls. And saddened at the same time that the British approach could be so archaic. When it came to how South Africa should approach the matter, our Constitutional Court unanimously upheld the right of prisoners to vote. If I can be excused for citing myself, in the case of August I wrote for the Court that:

"Universal adult suffrage on a common voters roll is one of the foundational values of our entire constitutional order. The achievement of the franchise has historically been important both for the acquisition of the rights of full and effective citizenship by all South Africans regardless of race, and for the accomplishment of an all-embracing nationhood. The universality of the franchise is important not only for nationhood and democracy. The vote of each and every citizen is a badge of dignity and of personhood. Quite literally, it says that everybody counts. In a country of great disparities of wealth and power, it declares that whoever we are, whether rich or poor, exalted or disgraced, we all belong to the same democratic South African nation; that our destinies are intertwined in a single interactive polity." [August v Electoral Commission and Others (1999)]

At a technical level, the decision was based on the notion that Parliament could perhaps limit the right of prisoners to vote, but not the administrative authorities. In a case heard a few years later the Court again unanimously struck down a Parliamentary

statute that sought to deprive all prisoners of the vote except for those awaiting trial or those in prison because they could not pay a fine. Re-affirming the fundamental value of the right to vote, the Court held that the justification advanced by the government for curtailing voting rights of prisoners was unsustainable, namely, that prisoners were unpopular and the general public would rather see electoral resources expended on facilitating voting by the elderly and the infirm. The judgment pointed out that:

"In the light of our history where denial of the right to vote was used to entrench white supremacy and to marginalise the great majority of the people of our country, it is for us a precious right which must be vigilantly respected and protected." [Minister of Home Affairs v National Institute for Crime Prevention and the Re-Integration of Offenders (NICRO) and Others (2004)].

Finally, it was interesting to note that the Canadian Supreme Court has decided (by a narrow majority) that the prisoner's right to vote could not be taken away even by Parliament. In doing so, it quoted the statement in the August decision that the right to vote literally said that everybody counted. Which prompts me to entertain the droll idea that one day in the UK the powers-that-will-be will correctly cite South Africa as an example of a country where prisoners exercise the right to vote.

Cape Town February 2015

"The vote of each and every citizen is a badge of dignity and of personhood"

Albie Sachs

Andrew: Reading Justice Albie Sachs' response to the question which I put to him after his Nelson Mandela - Oliver Tambo lecture in Strathclyde University in December 2014 one is struck by the measured and thoughtful tone of his words which are as judicial as one would expect from a former justice of the South African Constitutional Court and also as full of humanity as befits one who has suffered personally as much as he has in order to bring democracy to his country. He takes the debate about whether men and women should be entitled to vote while they are in prison to a level which we have not so far heard in the United Kingdom. A few phrases have stuck in my mind: "Universal adult suffrage on a common voters roll is one of the foundational values of our entire constitutional order... (It) says that everybody counts... it declares that whoever we are, whether rich or poor, exalted or disgraced, we all belong to the same democratic South African nation."

Contrast the tone of Justice Sachs with the emotional words of Prime Minister David Cameron who told the House of Commons in November 2010 that it made him "physically ill to even contemplate giving the vote to anyone who is in prison". It is to be welcomed that on occasion our politicians should demonstrate well-placed emotion but anyone who is familiar with debating techniques would be cautious when someone, not least a politician, bases his argument on physiological symptoms rather than sound reasoning.

Note the Prime Minister's use of the word "anyone" for that goes to the nub of the confused debate which has taken place in the United Kingdom since the European Court of Human Rights issued a ruling in 2004. It is important to understand that the Court did not rule that all convicted prisoners have a right to vote in elections. Rather, it ruled that a complete prohibition on convicted prisoners voting was incompatible with the European Convention on Human Rights. The ruling did not imply that the Convention required that all convicted prisoners must be given the right to vote. How voting is arranged is a matter for individual states.

In the majority of countries in Europe there are provisions for all or some convicted prisoners to vote. The United Kingdom is one of a minority, alongside countries such as Armenia, Bulgaria, Hungary and Romania, which have an absolute ban on voting by such prisoners. In 2002 the Supreme Court of Canada ruled that to ban prisoners serving over two years from voting was too broad a measure, stating that "Denial of the right to vote ... countermands the message that everyone is equally worthy and entitled to respect under the law". In both Australia and New Zealand, length of sentence determines whether or not convicted prisoners retain voting rights. In South Africa, as Justice Sachs explains, all prisoners have the right to vote.

The UK Government has a good record of complying with European Court decisions and it has now accepted that it should respond on the issue of prisoner voting. In December 2013 it published the Draft Voting Eligibility (Prisoners) Bill. The draft Bill contains three options. The first is that all prisoners serving sentences of less than four years should be able to vote; the second that this should apply to all those serving six months or less; and the third would preserve the existing prohibition. The Government has chosen not to allocate parliamentary time to the draft legislation and it will be for a new Government after May 2015 to decide how to proceed.

In the Scottish Independence Referendum (Franchise) Bill, subsequently passed by Parliament in November 2013, the Scottish Government chose not to include any provision which would allow convicted prisoners to vote. Speaking to the Bill Committee in June 2013 the Deputy First Minister said that the "Government does not believe that convicted prisoners should be able to vote while they are detained in custody". That statement could not have been clearer. However, the arguments presented by Nicola Sturgeon were nuanced and it may well be that the Government wished above all to ensure that the franchise legislation contained no provision which might affect the outcome of the referendum itself.

At some point, hopefully in the near future, we will have genuinely universal suffrage in the United Kingdom which, to paraphrase Justice Albie Sachs, will "declare that whoever we are, whether rich or poor, exalted or disgraced, we all belong to the same democratic nation".

London, February 2015.

Databases of media reports, court decisions and other material on the question of prisoner voting rights, can be found on www.cjsotland.co.uk/2014/12/votes-for-prisoners-in-scotland/; www.cjsotland.co.uk/2011/02/uk-prisoner-vote-reform-outlined-four-year-sentence-disqualification/ and www.cjsotland.co.uk/2007/04/prisoner-votes-march-2004-to-april-2007/



INCLUDED & CONNECTED

Sarah Roberts on why the new Bill could make all the difference to children with parents at risk of custody

'CLAIRE' WAS BEAMING when Jim Murphy MP and Mary Fee MSP listened to her story at the launch of the Support for Children (Impact of Parental Imprisonment) (Scotland) Bill in early February. The Bill, supported by Barnardo's Scotland, Families Outside, and NSPCC Scotland, is a step towards ensuring that the 27,000* children who each year in Scotland experience the imprisonment of a parent are no longer overlooked.

Claire has four children, all under the age of ten, and when her partner was sentenced earlier this year, no-one asked how this might impact on them. When one of her daughters eventually told a friend at school what had happened, that 'friend' passed it around the whole class, and Claire's daughter experienced bullying in the form of name calling and isolation. "It really affected her", Claire tells me, "she started banging doors in the house and just being really angry all the time." Claire's other daughter decided to tell people that her dad was working away. When their father was transferred to a prison in England (where the crime had been committed), at no point was the impact of this on the children considered. They haven't visited since their dad's transfer and are struggling to understand why they can't see him so easily. "If he could just finish his sentence up here, it'd be so much easier for me and the children", Claire says.

For such children, not being able to talk about the emotions associated with imprisonment (loss, anger, fear, loneliness, shock, sadness, sometimes mixed with relief) means that they often struggle to manage their confusion. Add to this, trauma (particularly if they have witnessed the arrest of their parent), stigma, and shame, and it is easy to see why many become isolated from their community, including school. No surprise either that one in three children affected by imprisonment develops a significant mental health problem compared with one in ten children in the general population.

The Support for Children (Impact of Parental Imprisonment) Bill aims to change this. Calling for a Child and Family Impact Assessment to be carried out, the Bill will mean that the specific needs of children with a parent in prison are recognised and that they and their care givers receive appropriate support. It's about asking the right questions and listening to what children and families are saying.

It has been a long time coming. As Nancy Loucks of Families Outside points out: "Child and family impact assessments have been recommended by Scotland's Commissioner for Children and Young People since 2007; by the UN Committee on the Rights of the Child in 2011; and endorsed by Together Scotland, SCCYP, and Families Outside in 2012. A growing number of the judiciary have also expressed their support for impact assessments. Families Outside looks forward to this opportunity to question the impact of imprisonment on the remaining children and families; to explore what a meaningful assessment process might look like; and to ensure appropriate actions are taken to mitigate the negative impact on children and families."

And the children themselves, what do they want? Over this last year, we have been working with an increased number of children and young people as clients in their own right, and have been asking them that question. They have told us:

"I want someone to ask how I am doing."

"I want to be listened to."

"I want to be involved in decisions that are made about me."

"I want to be connected and included."

That sounds exactly like the purpose of a Child and Family Impact Assessment. We need to stop doing things *to* people and start doing things *with* people and we need to take the wider view and focus not solely on the sentence in relation to the offence, but on those affected by the sentence. What made the biggest impact on Claire at the launch was that the politicians took to listen to her; it made her feel heard, valued, and respected. It's time to make sure that every child affected by imprisonment feels that too.

Sarah Roberts is Families Outside's child and family support manager. <http://www.familiesoutside.org.uk/>

Proposed Support for Children (Impact of Parental Imprisonment) (Scotland) Bill <http://www.scottish.parliament.uk/parliamentarybusiness/Bills/86482.aspx>

* The source for the figure of 27,000 children is a Scottish Government response to a FoI request from Dr Chris Holligan in 2012, extrapolating from the 2011 SPS Prisoner Survey.

THE MEDIEVAL NOTION of the 'abominable superstition' of the virgin cure for pox or syphilis enjoyed a resurgence in 18th, 19th and into 20th century Britain. The term 'child prostitution' may not have been recognised by Victorian society, however, children were used for deviant, unusual and curative services, certainly in the brothels and bawdy-houses of London and other large industrial cities and ports. The great brothels or 'temples' opened for gentlemen and military, merchants and trade, catered for all persuasions and charged accordingly. Most establishments had children set apart for curative purposes. Diseased children, if they survived, would be admitted to a Lock Hospital for treatment.

In Scotland young offenders and 'wayward' children were treated as criminals and sentenced by the courts in the same manner as adults. In Glasgow a Magdalene refuge was established for the rescue and reforming of girls at risk by 1812. Middle class women possessed of evangelical zeal were joined by women who held teaching and nursing posts and were together known as Lady Child Savers. Large numbers of 'fallen' and wayward girls were directed to reformatories and the Magdalene Institute: those who were found to be diseased were marched, heads shaven, to the Lock for treatment, to be returned if cured.

The Glasgow Lock Annual Reports (1840-1870) indicate that children younger than 13 years old were being admitted in numbers with *contracted* syphilis, many from reformatories, industrial schools and jails, others *from* the Magdalene Institute. Diseased girls were kept in medical isolation, kept apart from their family and friends, and rarely returned. The perception was that once 'ruined' they often turned to prostitution, and were therefore contaminated. Reformatories and industrial schools reported that such girls were shunned and avoided by others: "The object, once a girl had fallen, and this included the contraction of venereal disease through abuse or rape, was to contain the danger of contamination by isolating her from her friends" (Mahood, 1995). Victims were now perceived as a danger in themselves, viewed as a sexual risk.

The Youthful Offenders Act 1854 and the Industrial Schools Act 1854, established a system of special and reformatory schools offering residential *and* day schooling for children in trouble. The early industrial schools, where attendance was not compulsory, were reporting that young children, particularly girls, were manifesting signs and symptoms of molestation and violence. Children were largely left to roam and find what food and shelter they could in the streets. Boys formed gangs and lived in parks, middens and closes. Girls became 'wanderers' preferring the dangers of living on the streets to going home. Statistics for those who were known to the authorities, were alarming. By 1896 the Scottish School Board's scrupulous record-keeping revealed that (in Glasgow) 283 children,



Glasgow Lock Hospital prior to demolition: 1950s. Image supplied by author.

THE 'ABOMINABLE SUPERSTITION' AND THE 'CURE' OF SEXUALLY TRANSMITTED DISEASE

Anna Forrest on sexual offences
against children in Victorian Glasgow

mainly girls, were being incarcerated in residential schools and reformatories. The term 'wanderer' occurred in many registers of industrial schools, Magdalene lists and Lock medical records. While Scottish magistrates and public health committees sought additional powers to detain prostitutes and habitual offenders, local government boards were reluctant to issue greater powers of detention, fearing the resurrection of the more discriminatory aspects of the notorious Contagious Diseases Acts (see article in *SJM* 5).

Evidence was emerging of a 'white slave trade' where respectable girls were being accosted and corrupted for immoral traffic or prostitution in local ice cream parlours. Glasgow magistrates deployed the existing Burgh Police (Scotland) Act 1892 in order to secure the deportation of foreign pimps, particularly Italians, allegedly grooming girls for the thriving sex trade. These measures promoted the later Immoral Traffic (Scotland) Act 1902 which significantly increased the penalties for men living on immoral earnings (Davidson, 2002).

Newspapers fuelled rumours about the violation of children, and word of the 'abominable superstition' was out and widely known 'amongst the lower classes'. The exploitation of very young children sacrificed to a belief that connection with a clean female would cure a dose of venereal disease in a male was both abhorrent and fascinating to a late Victorian society. The Children Act of 1908 and the Immoral Traffic (Scotland) Amendment Bill 1910 were drafted in response, and municipal action uncovered evidence in chronically overcrowded housing of 'child outrage', with many incest cases being brought before the Scottish courts.

The concern surrounding sexual offences against children was evidenced after 1910 in the way in which Scottish law officers deployed Scots common law to penalise offenders who communicated venereal disease to young girls as a consequence of rape, attempt to ravish or lewd or libidinous practices. In response to the moral panic that was sweeping Scotland, Fiscals were instructed to ensure that such crimes should be heard before the High Court rather than in the sheriff courts.

The Children Acts of 1908 and 1912 had prompted the formation of the Scottish Society for the Prevention of Cruelty to Children (SSPCC), who along with police, moral vigilance associations and the Medical Women's Federation were using plain clothes officers to uncover sinister arrangements. The Lock Hospital annual reports showed numbers of children as young as 3 and 5 years old being admitted and treated for contracted venereal conditions. The medical professional reported the widespread effects of belief in the 'abominable superstition'. John Glaister (1902), Professor of Forensic Medicine and Public Health, Glasgow University stated in 1912, "... coitus between an infected male and a clean female led to increased evidence of rape upon a young female child under 12 years is so prevalent".

It was the persistent municipal, legal and medical opinion that this superstition was prevalent only amongst the lower classes. However, in giving evidence before the Select Committee on the Criminal Law Amendment and Sexual Offences Bills 1913, Dr. James Devon, medical officer at Duke Street prison, suggests that there was "evidence of this belief in people generally well informed as well as among the comparatively illiterate".

Medical opinion was divided on the causes of venereal diseases in very young people. The question of whether the conditions were contracted by sexual contact was often left unanswered, or just as often denied. Courts were reluctant to convict as the medical evidence varied so much. Where there was no apparent assault, no soiled clothing or bedding and no evidence of sexual abuse, the conclusion was often that these conditions were mostly caused through vaginitis, contaminated sanitary provision (rags), dirty towels, shared underclothing, baths or sponges.

For example, a School Board Medical Officer giving evidence in 1913 referred to a girl of 13 years allegedly assaulted by father in Glasgow tenement. Medical Report states "fingering of parts, dirt and/or worms", no vaginal examination. Worm powder given to mother. Note: disease often passed from child to child, bed sharing (National Archives of Scotland NAS AD 15/13/100).

An earlier Lock Hospital Report described the admission of "seven schoolgirls aged from 7-14 years the youngest was seven years old and she contracted the disease herself" (Patterson, 1882).

Finally, evidence before a Royal Commission on Venereal Diseases 1914-16 accepted statements from Lock Hospital medical staff, and general practitioners, testifying to the extent of child infection *contracted as a result of sexual assault*.

Denial, however, is not delusion. What is interesting is that, as referred to earlier, child victims of sexual assault were viewed as a sexual danger not just in need of protection, but certainly in need of control. This was view was widely shared by the medical profession and police force, so that girls who were the victims of assault involving the communication of venereal infection, were transferred after medical treatment in the Lock to other confining institutions such as industrial schools, children's homes or the Magdalene Institute. It was assumed that early sexual experience, whether abuse or seduction, would lead to prostitution: abused women and girls were deemed to be dirty and dangerous. Abolitionists and suffrage activists concerned with the rights of women, if alerted to the reality of child prostitution or child 'outrage', did not usually choose to involve or include it in their campaigns. It was left to others such as philanthropists and rescue workers to get children, particularly in large cities, away from the streets. The abhorrent reality of the 'abominable superstition' located child abuse within notions of the degenerate city, a myth that would never really go away.

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CONTEMPORARY society generates ever higher quantities of waste given the rate of consumption and production. The use of chemicals in manufacturing products has also increased the toxicity of waste (Pellow, 2007). Waste is not a mere useless residue, but is also a valuable commodity. Hazardous waste has an important share in the waste trade, with high costs of treatment and disposal. Most waste trade is regional (for example, within the EU) or takes place between developed countries that have waste processing facilities. The trade flows that are most likely to result in inadequate recycling or disposal are those from the global North (EU, UK, USA, Australia) to South (Africa, South East Asia and South America). The legitimate reasons for the trade in (hazardous) waste are the absence of appropriate domestic treatment facilities, the closer proximity of those in other countries, the need for valuable secondary materials in hazardous waste to be used in production processes in receiving countries and, most importantly, cheaper processing or disposal.

Waste is not a mere useless residue, but is also a valuable commodity

The deliberate transportation of hazardous waste to countries that do not have the necessary processing facilities is a major form of environmental crime. Waste fraud can refer to the activities of waste treatment corporations that are in

non-compliance with waste regulations, but also to organised crime trading waste on the black market (Ruggiero, 1996). Data about the trade in (hazardous) waste and waste generation are incomplete, but an estimated 20 per cent of containers exported from the EU contain waste and an estimated 20 per cent of those are in violation of export bans or administrative requirements such as missing or incomplete forms for waste trading (Baker et al., 2004).

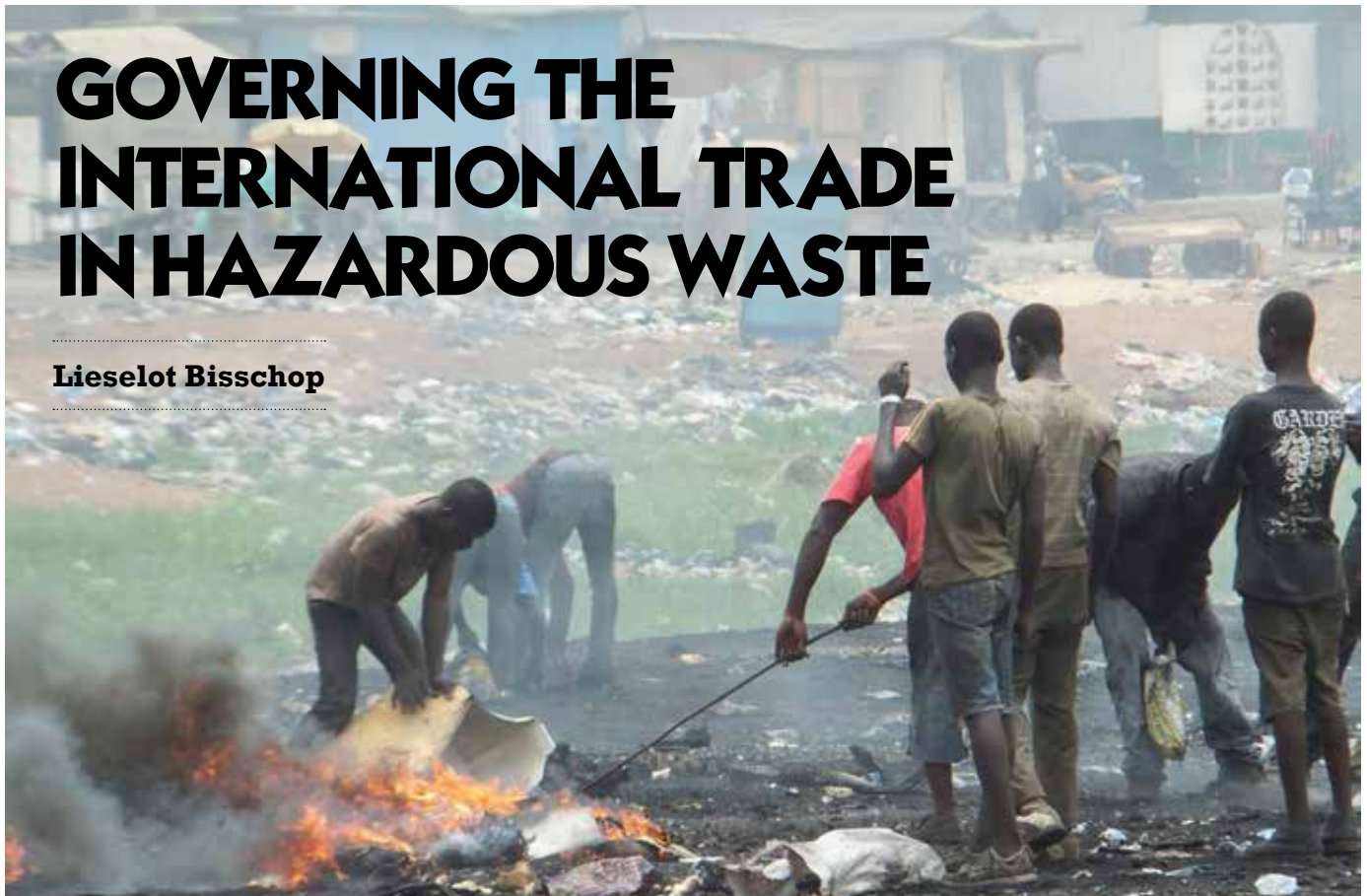
Waste and toxic waste in particular, is a health hazard, especially when dismantling and disposal policies and practices are substandard. Toxic substances stay in the environment for many years after they are absorbed in the air, water and soil, and often stay unnoticed harming the ecosystem and animals as well as people living and working nearby.

Given its potential harm, international environmental conventions deal with waste: examples are the *Basel Convention on the Transboundary Movement of Hazardous Waste and its Disposal* (1989) and the *European Union Waste Shipment Regulation* (from 2006). Although the trade in hazardous waste is one of the most regulated, several governance challenges remain.

A number of challenges are inherent to the governance of (hazardous) waste trade. Governance in that sense refers to initiatives that control and prevent the illegal trade in (hazardous) waste and the resulting environmental harm. A first challenge is the criminogenic nature of waste as a product. It is prone to fraud, because it can be fairly easily disguised by

GOVERNING THE INTERNATIONAL TRADE IN HAZARDOUS WASTE

Lieselot Bisschop



Agbogbloshie dumpsite, Accra, Ghana (2012, Lieselot Bisschop)

mixing it up or selling it as a second hand commodity (Gibbs et al., 2010). Waste also has an inverse incentive structure: although certain fractions of waste are valuable (such as metal), when you own (hazardous) waste you generally need to pay for environmentally sound treatment and disposal. The search for cheaper ways to treat and/or dispose of waste is thus an important motivator for the illegal trade.

A second challenge is the criminogenic nature of the waste sector. It is a very complex sector with a diversity of actors involved at different stages. In collection, transport and treatment, multiple smaller companies try to compete with the few big ones. As a consequence, the transition from legal to illegal can occur at several stages of the waste process. This can happen in national and cross-border transport but also in collection or disposal. The waste sector has also been linked to price fixing and racketeering (Van Daele et al., 2007).

A third challenge is in the regulatory framework and the interpretation of waste, recyclables and reusable goods. This has important legal ramifications because exports of waste to non-OECD countries are illegal but exports of second hand products for re-use are legal. This for instance applies to the case of electronic waste, where it can be challenging to distinguish between waste and second hand electronics. Every day more knowledge about harmful substances emerges but the discussion about what is a second-hand product and what is waste also depends on the cultural and socio-economic context. It is not easy for the regulatory framework to incorporate these complexities.

Implementation is a fourth challenge. Similar to other international environmental agreements, the *Basel Convention* and EU waste legislation relies on individual member states' willingness and resources to implement them. Only limited government resources are invested in controlling the illegal trade in hazardous waste. Some EU member states, for instance, fail to regularly inspect waste shipments. Imposing minimum requirements for inspections and controls for illegal trades in hazardous waste could be a solution. However, this is usually seen as an intrusion on the nation states' sovereignty. Quite often the responsibility for governing the waste trade is split up between different agencies such as the police, customs and environmental inspectorates or administrations who each have their own priorities, responsibilities and working methods. The transnational nature of the waste trade also brings its own practical and judicial difficulties. Taken together, this carries risks of fragmented approaches (Bisschop, 2015). Investigating waste fraud requires technical expertise, which is often present only with a limited number of people. The prosecution of breaches of hazardous waste regulations remains a national competence with significant differences between countries in approach, number of convictions and imposed sanctions (IMPEL-TFS, 2013). Fines that are imposed for waste fraud are perceived as too low to be effective and become part of shippers' business plans. Although it is often possible to prove one shipment is illegal, it may be hard to prove this has happened systematically.

The scale of the global waste trade makes it very challenging to rely only on governments to take initiatives in controlling and preventing illegal trade. Preventing environmental harm as a consequence of waste trade could

also be a responsibility of corporations and non-government organisations. For instance positive and negative incentives for corporate actors could be designed so that they can get involved in avoiding harm as a consequence of waste fraud. Take the example of e-waste (waste from electric and electronics equipment) where producers, recyclers and consumers could play a role (van Erp and Huisman, 2010). Producers can ensure less harmful recycling by phasing out hazardous components. Consumers could be more aware of unsustainable consumption. The lack of raw materials for instance serves as an incentive for recycling corporations to get involved. Transport actors could also be encouraged to be more transparent, and to avoid their vessel or company names being shamed for waste fraud. NGOs are crucial in instigating capacity building projects to engage local actors, for instance the informal waste workers in countries of destination who rely on informal waste dismantling activities as a sole source of livelihood (for example, e-waste or ship breaking). Governance initiatives to improve environmental legislation and implementation are then paired with projects that impact on education, health care and the economy of developing countries in order for them to have the economic, cultural as well as knowledge capital to refuse hazardous waste shipments. However, developing countries also generate their own (hazardous) waste (plastics, obsolete electronics and so on), either in industrial processes or through consumption. The quantities of domestic waste generation might soon exceed those of industrialised countries. Moreover, even if all trade answers to the legal requirements, this does not necessarily mean that the way of least environmental harm was chosen. The challenge of (hazardous) waste governance therefore clearly remains a global one.

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RETURNING CITIZENS

Hannah Graham, Steve Graham and Jonathon Field on a quiet revolution in prisoner reintegration

THIS ARTICLE offers a brief overview of a desistance-oriented approach to supporting community reintegration in the state of Tasmania, Australia. While community service is typically discussed in terms of 'payback' as a form of punishment, it can be harnessed in creative ways to support prisoner reintegration and desistance processes. Compelling contributions from desistance scholars (see, for example, McNeill and Weaver, 2010; Schinkel, 2014) advance the recognition that people with offending histories benefit from multi-faceted supports over time to change their lives, living conditions and life chances. Through this lens, the remit of supporting reintegration extends from a traditional blinkered focus on securing essential items to aid survival post-release, to include pursuit of identity change, relationships and resources which enable sustained desistance and human flourishing.

As our respective work roles and 'pracademic' research have been integral to the genesis and oversight (Steve and Jonathon) and empirical analysis (Hannah and Steve) of the initiatives described here (see Graham S, 2012; Graham H and White, 2015; Graham H, forthcoming), we readily acknowledge our subjectivity as authors.

Prisoner Leave Permits and Reintegration: how it works

Tasmania is almost equivalent in size to Scotland. However, its total population (around 500,000 people) and its prison population (around 500 people) are considerably smaller. Several forms of support and services are available to assist reintegration in Tasmania. Our focus here is limited to prisoner leave permits and community service activities.

The aims of the leave scheme (section 42 of the Tasmanian Corrections Act 1997) are:

- ❖ to promote pro-social behaviour
- ❖ to participate in restorative and reparative activities by giving back to the community and
- ❖ to reduce reoffending by actively reintegrating offenders into the community, including the promotion of positive social connections with families and significant others.

Different types of leave permits may be granted. For example, 'rehabilitative and reintegrative leave' may be used for education, training, a range of community service activities and 'giving back' projects (discussed later), creative activities (such as art classes and exhibitions), job interviews, work experience or to continue to work in paid employment. 'Resocialisation leave' is for prisoners to strengthen their relationships with their families, for example, home visits or attending a school event with their child. 'Compassionate leave' enables attendance of a funeral.

Issues of safety and duty of care are carefully balanced with consideration of rights and needs in determining a prisoner's eligibility for leave, and the conditions imposed if granted. Firstly, leave permits are predominantly (but not exclusively) granted to minimum security rated prisoners (approximately 35-40 per cent of the Tasmanian prison population). Secondly, to be eligible, prisoners must be serving a sentence of greater than 6 months. Usually this leave occurs in the last 6-12 months of the sentence. Additionally, prisoners convicted of sexual offences must complete a tailored rehabilitation programme and be assessed as presenting a low risk of reoffending to be eligible.

Considerable time and effort is invested in assessing risk and considering the potential impact on different stakeholders. A confidential process of victim notification is undertaken in advance through the Department of Justice Victim Support Service. The majority of leave permits involve prisoners being supervised by a custodian, who is subject to security checks. Breaches of leave conditions are relatively infrequent.

Recent statistics suggest a quiet revolution. In the year 2013-2014, over 18,900 instances of leave permits were granted. This represents a formidable increase of 3,100 per cent from a total of only 589 instances of permits granted in 2009-2010 (Smith, 2014). In releasing these figures, the Tasmanian Attorney-General and Minister for Corrections described the scheme as a "great success", acknowledging prisoners "are part of the community" (Smith, 2014). Local media responses were remarkable: front page headlines and opinion editorials cited local authorities and farmers praising prisoners for their hard work and skilled labour in helping others, and *calling for further increases* (Smith, 2014). The importance of this development lies in understanding how and why a significant number of the leave permits are being used.

Returning Citizens: 'giving back' projects

In collaboration with community-based stakeholders, Tasmania Prison Service offers prisoners opportunities to take part in a range of community service activities and restorative 'giving back' projects. Some of these are undertaken entirely within prison facilities, and others use the rehabilitative and reintegrative leave permits for day release.

Community service activities and 'giving back' projects include: a prison community garden, sustainability activities and organic food distribution network; environmental restoration and construction of stone bridges in restored creek areas; helping local authorities and farmers with recovery efforts in bushfire-affected areas; training assistance animals for people with disabilities and the 'Pups on Parole' animal foster

care project re-socialising unwanted dogs for placement in new homes; building outdoor adventure learning facilities for Scout groups; and volunteering as accredited community sports umpires at public cricket and football games. 'Hand Made With Pride' involves female prisoners designing and sewing bespoke pieces for premature babies in neonatal intensive care, women with breast cancer, and homeless people. Several of these activities and projects include accredited education and training to further develop participants' human capital and post-release employment prospects.

Giving back in community is different from community payback: it is not imposed and is not a part of a sentence. Prisoners *voluntarily choose* to participate, taking on active roles to shape a 'giving back' project as their own, as a source of passion and pride. As these are reintegrative initiatives, not correctional industries, Tasmania Prison Service does not procure fiscal remuneration or material benefits (such as food from the prison community gardens) from them.

Giving back through community service and the leave permits scheme have been intentionally co-designed to help foster developmental processes of desistance (see Graham, 2012). For example, they increase the amount and qualities of the relationships available to prisoners, adding to the social networks of people they would otherwise see through traditional prison visits. Community service activities present opportunities for generative giving in meaningful and socially valued roles, reciprocally widening the repertoire of life-giving experiences available to prisoners. Ostensibly, we see their value as spanning four aspects of social capital, enabling people in prison to actively make a difference *in* community, *for* community, *with* community, and *as* community.

Our research indicates that participants value reciprocity and respect (including self-respect) as transformative elements:

Correctional officer: I have to say these guys love to put their hand up to help. They work really hard [...] A lot of these inmates change in the process, they are more settled and forward thinking. At the end of all of this, they feel really good. Their giving has good outcomes.

Prisoner: Yeah, the giving back works both ways. The giving is in two directions. We all put in and we all get something out of it. (Graham and White, 2015: 58)

Social justice is another integral quality; for example, Tasmanian prisoners co-design and co-produce cold climate portable swag bedding for homeless people and grow organic food for children and families experiencing food insecurity. This is patently different from essentialist passive welfare recipient caricatures of prisoners and ex-prisoners as merely the sum of their most basic needs. In the context of these initiatives, people in prison are positioned as skilled helpers and makers. The ethos underpinning this approach emphasises moral and social rehabilitation to reconcile and reduce the differences between returning citizens and their communities. Community service, and the trusted position of being granted leave permits, may be used as part of a parole application.

Crime is an event, not a person. Opportunities for belonging and becoming something other than a 'criminal' or 'offender' need to start long before liberation day. The 18,900 instances of Tasmanian prisoner leave permits in 12 months



'Hand Made With Pride' involves female prisoners designing and sewing bespoke pieces for premature babies in neonatal intensive care, women with breast cancer, and homeless people

demonstrate how penal risk management arrangements can be used sensibly to allow for more productive and meaningful uses of prisoners' time, offering graduated transitions in returning home. Developing community around common ground yields fertile opportunities for change and working towards different futures: importantly, in this approach, people leaving prison are not the only lives that are being changed.

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Jonathon Field is a Manager in the Sentence Management, Support and Reintegration unit in the Department of Justice Tasmania Prison Service, Australia.

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LEFT FIELD?

Kenny MacAskill MSP,

Cabinet Secretary for Justice from 2007-2014
interviewed by **Nancy Loucks**

NL: Scotland has had only three Justice Secretaries since devolution. Has that continuity had an impact?

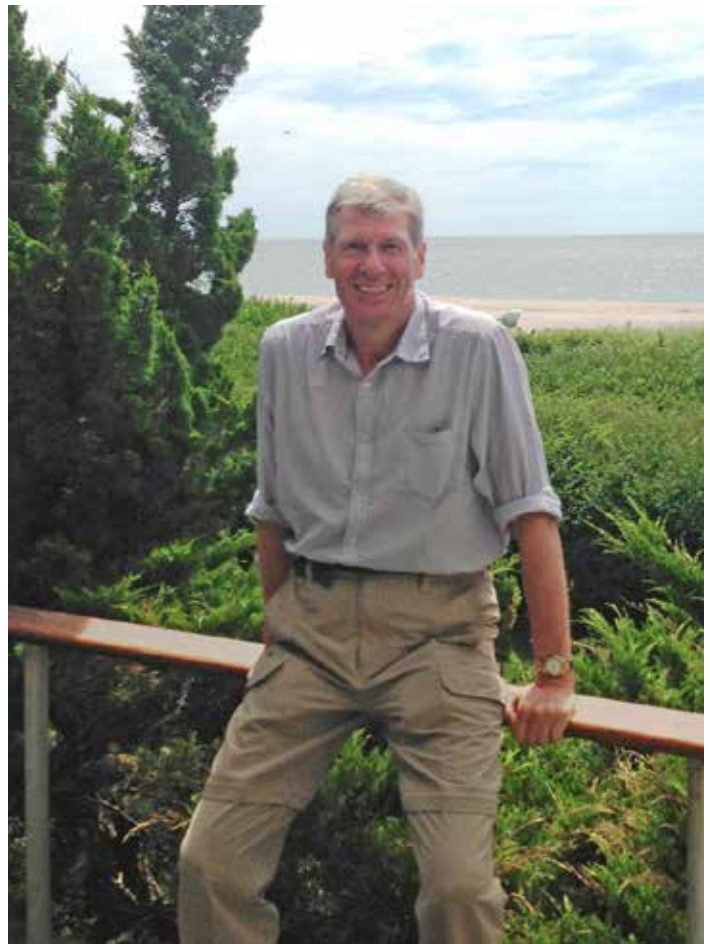
KM: We all have a shelf life in politics but seven and a half years is probably longer than most justice secretaries will serve. I think there were reasons for it, including police reform. Michael Matheson will make changes to reflect his own personality, but the direction of travel is the same.

After 2003 [the SNP] learnt a lesson that we had to say what we were for, not just what we were against - that we had to engage with the wider stakeholder community. Labour got into difficulties with the mantra of 'tough on crime, tough on the causes of crime'. SNP didn't go in with an ideology; we went in taking the expertise from the practitioners. The policy decision about 1,000 additional officers was supported by the Police Federation and indeed the public. The coherent penal policy came from speaking to Andrew Coyle, came from speaking to others in the POA, it came from the wider circle.

The divergence north and south has come about because the SNP government has delivered policy that was formulated by best possible advice. We licked our wounds after two electoral defeats, learnt from the community and went forth with a solid coherent basis that's been reflected in continuity and in the support the stakeholders have given us.

What would you say has been the main change in direction since Cathy Jamieson's time in office?

KM: We have created a more liberal regime. We managed to create some calm; and we don't need perpetual change for change's sake. We need to have respect and understanding. I was amazed to find out that the Cabinet Secretary did not routinely meet chief constables. It's about engagement. Showing respect got respect, and going in the right direction got support.



It can be quite a difficult balance being strategic and liberal rather than reactive or populist.

KM: Sometimes you've just got to source some courage and recognise that what they say in the paper, tomorrow is chip wrappings! The public are not as repressive as the Daily Mail would have, and they are not as vindictive as the Daily Express would desire. Equally there were things we were prepared to do and things we weren't prepared to do. I remember meeting the then editor of *The Sun in Scotland* to try and get them to support community sentencing. He said that if we put everybody in orange jump suits, he would back us. I remember saying "if there is evidence that says putting people in orange jump suits will work, then I will be prepared to do it. If there isn't, then I am not prepared to do it".

David Torrance's biography of Alec Salmond refers to you as 'a radical young lawyer' in your earlier career.

KM: I was a young lawyer, and yes I probably was radical, but I like to consider myself as something of the left. I view myself as social democratic in the North European tradition. In government, there are constraints that go with that office; out of government, you can be more open.

I always remember being asked, "What do you want to do, Minister?". We said four things: 1) a visible police presence in our communities; 2) we want a coherent penal policy - that prisons should be for those who have to be there; 3) we want to tackle serious organised crime, not just dealing with those at a lower level; and 4) to address the problem we face in Scotland with alcohol abuse. To be fair to the civil servants, they went away and delivered. We have record police numbers. We have, after McLeish and Angiolini, a better direction for penal policy. We have the Serious Organised Crime Task Force taking action ...

Beyond that, there is an opposition to privatisation. It was suggested at some stage by police officers that maybe we could be outsourcing what's currently dealt with by police staff. We ruled that out. I don't care whether it goes to the Prison Service or it stays within the police service, but it's not going out to G4S.

You've taken some difficult decisions, not least in relation to the compassionate release of Megrahi. What bearing would you say these decisions have had on your work or yourself?

KM: I don't think it made any difference. The staff I had in my private office and in the wider justice department were exceptional. What I delivered was based on the principles, laws and the regulations we have in Scotland and how we think society should be. What effect did it have? Well, it put my profile global. I managed to escape for a brief holiday shortly after, and as I passed through Amsterdam airport I saw my picture on the front page of the *Wall Street Journal*. Are there people who disagreed? Yes there are. Equally there are lots of people who are very kind in supporting me.

I met with victims from all over. Grief is a very personal thing and you have to cut slack about how people react. I have nothing but contempt for those who sought to take what was a very difficult situation for Scotland and make political capital out of it. So we did what was right, and I've never ever hidden or shirked from the decision.

Why did you change your mind on the building of HMP Inverclyde?

KM: I don't think I necessarily ever changed my views. What has changed is the ability/window to deliver. It comes back to what we said earlier: you have to be able to sell it to the public and take the public with you.

This came about with the election of Nicola Sturgeon: that was the transformation, because, before then, there would have been problems, and there would not have been the political will. We would not have got the same level of political buy-in from opposition parties. But once you have the first female First Minister, a gender-equal Cabinet, what you cannot then do is to say that 400 of the most vulnerable, marginal are not included.

Policy choices opened up an opportunity. I welcome where Jim Murphy has come from. I believe the Government will take that on board. It's not as simple as saying "Well, if you don't build for 300, build for 200 and you'll get 100 spaces in the community". The money is not as 'sell-able' as that, but there is a clear direction of travel, and it ties in with changes that are coming in terms of the Judicial Institute so this is the moment to seize it.

Does that imply that the Referendum took the focus away from some of these issues?

KM: The Referendum has actually created a much more politically aware society and a much more radical society. Many of those who are championing the position about building a new HM Prison Inverclyde [such as] Women for Independence either had an interest or who have been galvanised by it. Frankly over the last seven years Labour has been a mirror image of the Tories in justice policy, and hopefully this will be an opportunity to change. I remember when it was Pauline Neil, and I was early in office, making the overture that, "Can we get to a situation in the Scottish Parliament where SNP, Labour, Liberals, and Greens will all support what's not SNP policy but is actually the sector policy. We'll never get the Tories on board, but the rest of us can". I would hope that this, after 2016, might be the scenario.

The change in Labour hopefully will be not just superficial, and I can't criticise where they are, and I am hopeful and maybe confident that the SNP Government will realise that when it's going back out to tender for a smaller prison, let's put resources into the community.

What would you say your biggest challenges were?

KM: One of the biggest challenges was holding the line on knife crime because the media was quite hostile. Knife crime has plummeted. And yet I remember seven years ago, it was almost every time you picked up a paper it was another horrendous murder. So it wasn't easy there, but we did the right thing with the support of a wide section of those involved in the front line. Had we not, then that would simply have fuelled other attacks, other drives to move away from the social democratic agenda.

What are you proudest of?

KM: There's lots of things, but I think the Cashback for Communities Scheme. I go to so many events where you realise that being Justice Secretary is not all about the laws that you've brought in, it's actually about encouraging good behaviour, to give folk an opportunity. Equally simply realising that moving away from an agenda driven by the Daily Mail-type view that an eye for an eye is the way to go; no, the way to go is to give people hope, opportunity, and self-esteem.

This is an edited version. For full transcript: editor@scottishjusticematters.com.
Sound file: soundcloud.com/sjmjournal

Take Five

Scottish Justice Matters asks our politicians to respond to questions about crime and justice. We asked:

Should environmental justice and crimes relating to the environment, be priorities for Scotland's criminal justice system?

**Patrick Harvie MSP,
Scottish Green Party**



ENVIRONMENTAL JUSTICE

remains low on the political agenda, both in Scotland and internationally. Continued exploitation and on-going environmental harm necessitates an increased urgency for radical change.

There simply hasn't been anywhere near enough attention devoted to legislation, regulation and enforcement to effectively address this issue.

Environmental law in Scotland currently exists as a handful of separate acts of legislation which is yet to be worked into a clear and coherent body of law. Shortcomings of both regulation and enforcement undermine the aims of legislation.

The Regulatory Reform Act, passed one year ago, included a duty for regulators to contribute to "sustainable economic growth". There's an uncomfortable contradiction at play here; the relentless pursuit of growth is simply not consistent with meeting our climate targets and a host of other environmental priorities. Committing the Scottish Environmental Protection Agency and other regulators to pursuing economic growth will divert them from their core purpose.

Even where legislation and regulation are being used to protect us against environmental damage, the fines are often loose change for large multi-national corporations, and penalties are often reduced as a reward for early admission of non-compliance. A lack of political will to clamp down on big businesses acts as an obstacle to progress.

But as with other social ills such as tax avoidance, the problem lies not only with acts which are already crimes, but also with behaviour permitted and even encouraged by public policy. From oil and gas to waste management, from opencast extraction to transport, a host of industries inflict intolerable environmental harm yet operate entirely without sanction.

It's not only the Scottish Government that needs to acquire an appetite for this issue. Only when government at Scottish, local and UK levels take environmental justice seriously will we see the progress that is so desperately needed.

**Sarah Boyack MSP,
Scottish Labour**



ACCESS to and promotion of environmental justice is a key priority for Scottish Labour. Our overarching ambitions to promote social justice, equality and solidarity mean that we understand the importance of the links between communities in Scotland in a global context.

This means taking environmental justice seriously: meeting our climate change targets, our air quality obligations and our environmental protection obligations whether on land or in the marine environment. Ambitious targets that are ignored serve no purpose.

People are increasingly aware of the links between health and the quality of our environment. We have the opportunity to lead the way with climate justice given our growing renewables sector and green jobs but we need to do more.

Climate change is already affecting our environment. We have a beautiful and diverse landscape and wildlife that we must protect and maintain. Ignoring the challenges that come from climate change risks further irreparable environmental damage.

We believe that every individual should have a basic entitlement to a healthy environment and that it is important that Government protects this fundamental right.

A key question is how people protect those rights and how the laws governing our environment are upheld and enforced – whether it's in relation to litter, waste management and pollution, or crimes against animal welfare and protected species.

We need a justice system with the capacity to address those crimes, which require specialised policing and prosecution services, across the country.

While there are important issues about the affordability of access to justice which need to be addressed, there is also the challenge of ensuring that access to environmental justice should begin much earlier than the criminal justice system.

We need stronger community engagement in local decision making to address the lack of influence people feel they have in their lives and local areas. That's why we recently announced our support for giving communities the final say on fracking proposals given the impact such activity could have on people's lives.

**Richard Lochhead MSP,
Scottish National Party**



ENVIRONMENTAL CRIME is a pernicious activity that threatens our environment. That is bad enough on its own, but is even more serious given the

importance of the environment for our health and well-being, and the success of many key sectors of our economy. The Scottish Government recognises the importance of identifying environmental crime and taking action against it.

In 2011 I convened an environmental crime summit and established an environmental crime taskforce. The taskforce, chaired by SEPA's Calum MacDonald, reported to me in 2013, and last November held a conference around progress to date.

We are making good progress in enhancing the tools for action. Criminals must not - and will not - be allowed to profit at the expense of Scotland's natural assets or compliant operators.

The Regulatory Reform (Scotland) Act 2014, which implements recommendations from the taskforce, is a good example of the actions that we are taking; supporting the work of a key agency such as SEPA. It has given SEPA a wider suite of enforcement tools required courts to have regard to financial benefit arising from certain offences when setting fine levels.

Provided enhanced powers of entry and search for SEPA; allowing SEPA to gather information on financial benefit as well as the environmental offence itself.

Created a new offence relating to significant environmental harm;

Established new provisions on vicarious liability and liability, where activities which are carried out by arrangement with another will also help target those who are truly responsible, not just those who carry out their dirty work.

Environmental crime is a threat to Scotland that must be challenged, and will continue to be challenged for as long as it is required. People must be aware that we will not accept environmental crime in Scotland and we have an agenda for action which we will continue to pursue.

**Alison McInnes MSP,
Liberal Democrats**



FROM A PROCEDURAL perspective, the criminal justice system can do more to empower people to realise their environmental rights, seek

redress when laws are broken and help prevent future environmental injustices.

Scottish Liberal Democrats are committed to protecting and promoting the three principles of the Aarhus Convention. It enshrined the public's rights to environmental information, participation in decision-making and access to justice where these or environmental law have been breached. The convention was ratified in 2005 but concerns have been raised about compliance.

For example, the recent Court Reform Act established a three month time limit for applications for judicial review which may erode access to justice. It is reasonable to expect individuals, communities and campaigners concerned about an environmental matter, or indeed any other issue, to require longer to decide upon a course of action and marshal their case.

The Scottish Parliament's Justice Committee received evidence that this short limit will present real challenges to those who require legal aid or who need to find a solicitor willing to act pro bono or for a reduced fee. It could hurry some into making an appeal, prevent the proper exploration of alternative dispute resolution, or unreasonably put others off altogether.

These provisions are needlessly restrictive but the Scottish Government resisted my attempts to extend the time limit.

Elsewhere, some campaigners believe judicial review doesn't go far enough to ensure Convention compliance because it is mainly about procedure, not substantive review on the merits. A recent draft ruling of the meeting of the parties to the Convention also indicated measures are required to ensure court procedures aren't prohibitively expensive.

The Scottish Parliament and other public bodies must do more to ensure the environmental rights of communities and individuals are sufficiently protected and their ability to exercise them is enhanced.

**Margaret Mitchell MSP,
Scottish Conservatives**



ACCORDING TO SEPA, Police Scotland, and the Crown Office and Procurator Fiscal Service environmental

crime, such as illegal waste dumping and electronic sea-bed fishing, has become a key area for the expansion of organised crime and is worth an estimated £2 billion annually to organised crime groups.

Furthermore, at a recent Environmental Crime Taskforce conference, Police Scotland revealed that the crime group with the greatest threat risk and harm score in Scotland is involved in waste crime, which filters into other areas of their illegal activity such as corruption, drugs, trafficking, firearms and money laundering.

The Scottish Conservatives have therefore urged that Proceeds of Crime legislation should be used to target specific projects, including tackling environmental crime. Specific funds should be set aside for one-off projects which would allow a taskforce to target an area where they believe there is scope for greater prosecutions. Over time, this will generate more funds to be added to the confiscated proceeds of crime which could be invested in more community projects using the Cashback for Communities programme.

In addition, Zero Waste Scotland estimates that there are 61,000 incidents of fly-tipping each year in Scotland and are aiming to launch a fly-tipping map covering all 32 local authorities. Each local authority must, however, independently sign up and I would urge them to make this a priority, not only for local residents that have to suffer the effect of fly-tipping, but also for the longer-term environmental impact it causes.

A WEEK IN THE LIFE OF A DOMESTIC ABUSE ADVOCACY WORKER

Kate Graham works for ASSIST, the specialist independent service focused on reducing the risk to and improving the safety of victims of domestic abuse. She is based in Glasgow Sheriff Court.

Monday

Arriving early I prepare for the referrals to come in from the Police with victims to be contacted prior to today's Domestic Abuse Custody Court. We have a whole weekend's worth of accused persons waiting for a brief audience in Glasgow Sheriff Court. I speak to the first victim referral of the day by phone and introduce the service. I explain the process and ask if she would like the Court to be made aware of any wishes or concerns she has. She would be in favour of specific bail conditions being imposed to prevent her now ex- partner from harassing her at home or via text message as is his usual pattern. She is scared he will come to her work. We ask for bail conditions to cover here too. I explain that there is no certainty in this, but we can ask. Thankfully this happens and she is relieved to hear this when I call back to explain what will happen next and give her court dates.

He was also given a Non-Harassment Order ... before the ink on the order is even dry, he is arrested for breaching it.

Tuesday

Following on from a MAPPA (Multi Agency Public Protection Arrangements) meeting the previous week I attend a child protection case conference. Things have been difficult for this client as a result of the abuse suffered which has escalated in a short space of time. The accused was given a custodial sentence at trial and due to time served was released upon sentencing. He was also given a Non-Harassment Order preventing him from contacting our client and prohibiting him from entering her address. He wastes no time in heading straight to her upon release and before the ink on the order is even dry, he is arrested for breaching it. He is given another custodial sentence. Nobody is optimistic that he will reflect on his conduct while inside, and we do what we can and wait. We are there to ensure that our client does not bear the responsibility for the actions of the accused and ask for appropriate agencies to come in to support her.

Wednesday

We contact a client to discuss the sentencing diet scheduled for the following week. She has low expectations as this is now the third time that the accused has been scheduled to appear. She feels that he is avoiding this by not turning up and this is not being addressed. She has prepared an impact statement but is disappointed when I explain that these are not generally used in summary cases. This is a difficult issue as most domestic cases are summary cases. I explain that there is a criminal justice social work report being written and I offer to contact the writer on her behalf to ask that her views are in some way incorporated. I also collaborate with her to amend her statement to allow her to have the spirit of it entered into our report for the Procurator Fiscal. The advocacy worker in court will speak to the PF and draw their attention to the content of the report in the hope that some of it will be conveyed to the Sheriff for sentencing purposes.

Thursday

A client has contacted to say that she has been receiving correspondence from her ex-partner in prison. He does not appear to accept what he has done and insists on seeing the children. He does not know them as she fled when they were babies and she has been looking over her shoulder ever since. Criminal justice social work assessment of this man post trial is concerning: despite going through a High Court trial with my client as key witness he believes she has been coerced into doing this to him and we fear he is counting the days to their 'reconciliation'. The client feels now that it is time to leave her home and her family and move a considerable distance away. I begin the process of contacting other local authorities for housing on her behalf.

Friday

A client calls in to say that she has been made aware of her ex-partner's intention to appeal his conviction. She is scared and anxious and tells us this ruined her Christmas. I contact the PF and they advise that they are confident that he will serve his sentence. I call the client and offer reassurance but know that this is of little comfort.

BOOK REVIEWS

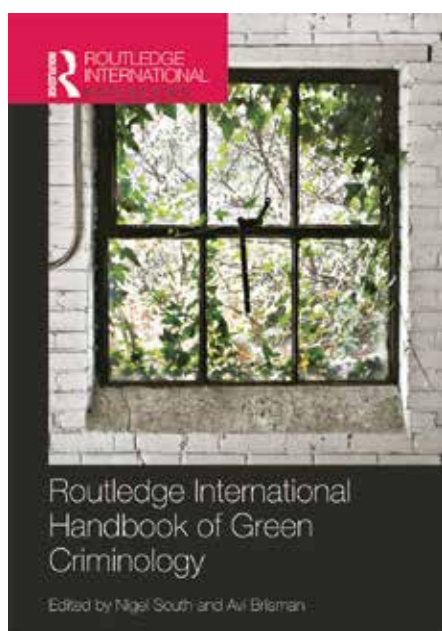
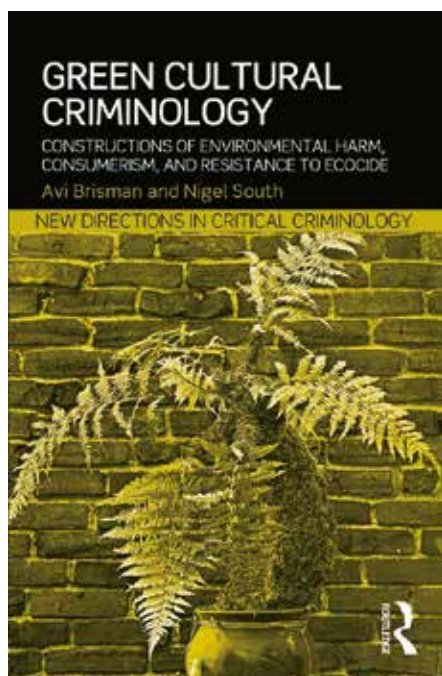
Green Cultural Criminology:

Constructions of Environmental Harm, Consumerism, and Resistance to Ecocide

Brisman A and South N (2014). Routledge; 162pp. ISBN 979-0415630740 (pbk).

Routledge International Handbook of Green Criminology

South N and Brisman A (eds) (2014). Routledge; 448pp. ISBN 978-1138846692 (pbk).



Green Cultural Criminology, a very short book at around 140 pages (excluding bibliography), is an interesting attempt to demonstrate how cultural criminology might be employed to expand and enrich analyses of environmental harms, corporate and individual responsibilities and culpability. At first sight, the format of the book is unappealing, cluttered as it is with many and lengthy quotes and endnotes, but this is, ultimately, the book's strength in that a broad range of literature, old and new, is used, concisely and effectively, to illustrate the relevance of adopting a multi-perspectival, or interdisciplinary, approach to the subject. Essentially, the authors are interested in the impact of representations of the 'natural' (always a slippery term for the social sciences) on the environmental consciousness of humans.

A key point of the book is that criminology should attempt to form new and better working relationships with media, to "participate in the news-making process - to become part of the social construction of public opinion about environmental crime and harm (and about human-nature relationships, more generally)" (p.32). This is perhaps easier to achieve now that, contrary to the German sociologist Jurgen Habermas's claim that the public sphere has been re-feudalised (privatised), public space has been enlarged due to the emergence of digital communities, for example, social networks, blogs, and citizen journalism (user-led journalism). The purpose of this is to challenge and replace existing media and political discourses that emphasise the frequency and harm of street-crime over environmental crime, and thus re-constitute the meaning(s) of crime and expand the remit of criminology. While cultural criminologists have a reputation for "intellectual lawlessness" (p.118) and for focusing on micro-analyses, that is to say, of subcultures and quotidian experience, green criminologists tend to aim higher to offer critiques of corporate and state crime. What the authors propose is that these seemingly incompatible perspectives are, in fact, similar in their interdisciplinarity and that criminology in general is, or should be, "porous" enough to accommodate new collaborations (p.120).

The *International Handbook of Green Criminology*, unlike many of the commodities discussed therein, does what it says on the tin: it presents the reader with a thoroughgoing exploration of green criminology in all its shades. Theories, methodologies, and empirical studies from around the world are discussed in this collection of twenty-six essays. The essays on theory enlighten by outlining a history of green criminology, from its origins in studies of crimes of the powerful to its present concerns with ecocide, that is "the contamination and destruction of the natural environment" (p.58).

A clichéd view of environmentalists is that of the hippie-type who dreams of an Edenic past in which humans thrived happily in harmony with nature and enjoyed the wealth of its harvests. While Heckenberg and White (pp. 85-103) discuss an, at times, interesting and varied range of methods and methodologies that could be useful to green criminologists, their essay concludes with the advice that we should attend to "elder

knowledge and expertise” so that we might learn about the “environmental landscapes of the past ... the beliefs, values ... and practices of former generations” (p.102). Attention to historical narratives is no bad thing, but such assertions epitomise the anti-humanist thread that runs through much environmentalist thought, that is, a self-loathing rejection of the modern that is a consequence of a perceived fall from grace with nature.

However, sometimes you just can't keep a good theory down, and Robert Agnew's essay (pp.58-72) on how a modified strain theory helps to explain how strain, brought about by, among other things, excessive consumption and the contemporary habit of comparing oneself to those with wealthier and more privileged lifestyles, is a consequence of conformist practice and ideology, which is to say that ordinary, routine harms (such as central heating; meat-eating) committed by individuals unwittingly serve the interests of dominant social forces. This is hardly earth-shaking news, but the virtue of Agnew's essay is that he takes established theories (social learning; rational choice) and applies them successfully to explain how and why non-criminal, routine, environmental harms have become commonplace, more so than the street crimes that media and politicians tend to focus upon. So, perhaps listening to old stories isn't such a bad thing after all.

Marx wrote that it is the task of philosophy to change the world, not merely to interpret it. There are a great many 'oughts' and 'shoulds' in this book, and it is this proposed shift from the descriptive (what is) to the prescriptive/normative (what should be) that is unsettling, but it is (or *ought* to be) good to be disturbed by books. Many of the uncomfortable 'facts' described in this book such as the systematic destruction of natural resources, the commodification of water, the abuse of non-human species, incite the desire to know more about the myriad harms that, knowingly or unknowingly, are wrought by individuals and organizations, driven by global capitalism's short-term pursuit of economic wealth. In the concluding chapter, the editors note that humans have the capacity for foresight and thus ought to be able to plan ahead, but in the current stage of modernity infantilisation has “liberated or absolved adults from prospective thinking” (p.411). It is this emphasis on the prospective, rather than the more traditional, retrospective orientation of criminology, that excites the reader as it provides a set of tools (some old, some new) with which to make “connections between individual and group behaviour, socio-economic structures, political organization(s), and environmental harm” (p.411).

Space does not permit further discussion of this worthy book, but it covers such a wide range of theories and methods (old and modified), and interesting research topics, air pollution, food crime, litter, conflict minerals, wildlife trafficking, and even crime films, that it will doubtless prove an invaluable resource for anyone teaching in this area, or wanting to know more about new developments in criminology and environmental matters. Both books recommend an interdisciplinary approach that examines green crime from different, and sometimes unusual perspectives. However, the nature of academic life is such that it encourages a silo mentality, a desire to protect one's own corner. These books show that this is most definitely not the way forward.

Events

Civic Repair: Why Trust is Important for Penal Reform

Wednesday 11 March 2015 at 17:30
Edinburgh Centre for Carbon Innovation EH1 1LZ

As part of their series on *Perceptions, the Public and Punishment*, Professor Vanessa Barker will be joining Howard League Scotland to discuss the public role in generating penal reform, chaired by Professor Fergus McNeil.

www.howardleaguescotland.org.uk

The Media - Shaping Perceptions, Politics and Punishment

Tuesday 21 April 2015 at 17:30
University of Strathclyde, Glasgow G1 1XQ

Howard League Scotland, in conjunction with the Centre for the Study of Law, Crime and Justice invite you to a considered discussion of the media's role in shaping political and public perceptions of punishment in Scotland.

www.howardleaguescotland.org.uk

SASO Glasgow Branch Conference

Thursday 14 May 2015
University of Strathclyde, Glasgow

“The exploitation of the vulnerable: how the law protects the dignity of vulnerable individuals”

Conference Chair: Kirsty Wark

Themes: Forced Marriage; Female Genital Mutilation; Trafficking; Domestic Abuse; Vulnerable Offenders.

www.sastudyoffending.org.uk/

National Youth Justice Conference 2015

Wednesday 17 and Thursday 18 June 2015
Dundee's West Park conference centre

Confirmed speakers include Martin Crewe, Director of Barnado's Scotland and Jim Gamble QPC, former chief executive of the Child Exploitation and Online Protection Centre.

www.cycj.org.uk/events/

SASO National Annual Conference

Friday 13 and Saturday 14 November 2015
Dunblane Hydro, Dunblane.

www.sastudyoffending.org.uk/

scottish justice brief

Current legislation

Air Weapons and Licensing (Scotland) Bill

This Bill was introduced in May to “make provision for the licensing and regulation of air weapons” and other licensing matters relating to alcohol. The regulation of air weapons was an SNP manifesto commitment in 2007 and 2011, and the right to legislate was implemented by the Scotland Act 2012. The Local Government and Regeneration Committee are currently hearing evidence at Stage 1.

Criminal Justice (Scotland) Bill

“A Bill ... to make provision about criminal justice including as to police powers and rights of suspects and as to criminal evidence, procedure and sentencing” and other matters. Most media attention continues to be directed at the provisions to implement the proposal in the Carloway Review, to reform the Scottish evidential tradition on corroboration.

The Justice Committee’s Stage 1 report (February 2014) supported the general principles of the Bill with the exception of the corroboration proposals. Although the Bill cleared Stage 1, a surprise announcement in April, in heated exchanges at Holyrood, postponed Stage 2 and therefore any further progress, until after a group of academic experts under Lord Bonomy group reported, which it did in October. The SG then consulted: <http://www.scotland.gov.uk/About/Review/post-corroboration-safeguards>

Stage 2 amendments to the Bill are still open.

Criminal Verdicts (Scotland) Bill

This Member’s Bill was introduced by Michael McMahon MSP in November 2013 to “make provision for the removal of the not proven verdict as one of the available verdicts in criminal proceedings; and for a guilty verdict to require an increased majority of jurors”.

The Justice Committee is to lead but the Bill does not appear in its work programme. No other information is available at the time of writing and its completion date is “yet to be determined”.

Human Trafficking and Exploitation (Scotland) Bill

Introduced by Michael Matheson in December 2014, this Bill aims to “make provision about human trafficking and slavery, servitude and forced or compulsory labour, including provision about offences and sentencing, provision for victim support and provision to reduce activity related to offences.” The Justice Committee is to hear evidence at Stage 1 in March.

Prisoners (Control of Release) (Scotland) Bill

“A Bill to end the right of certain long-term prisoners to automatic early release from prison at the two-thirds point of their sentences and to allow prisoners serving all but very short sentences to be released from prison on a particular day suitable for their re-integration into the community.”

The ending of automatic early release was an SNP manifesto commitment in 2006. However, a more pragmatic view against a revision of current practices held in the face of repeated criticism especially from the Conservatives. This Bill was introduced in August 2014, to end automatic release at the two-thirds point and replaces that with discretionary release overseen by the Parole Board at the halfway point, for prisoners sentenced to four years or more for a sexual offences and for those sentenced to 10 years or more for any offence. In early February, FM Nicola Sturgeon, on a visit to the offices of Victim Support Scotland, announced an extension to all prisoners serving four years or more.

The Justice Committee is currently hearing oral evidence.

See also the links database on:

www.cjsotland.co.uk/2015/02/the-politics-of-automatic-early-release-from-prison



SJM5 'Living It' issue

THERE HAVE BEEN two events prompted by our #LivingIt issue.

On February 13th there was a well attended and thought provoking seminar organised by the Consortium, looking at the mental health needs of young people in criminal justice and how these are not being met.

A report will be available shortly on www.sccj.org.uk

On February 17th, the Venture Trust, the Centre for Youth Crime and Justice and the SJM, were joint hosts of a successful Parliamentary event foregrounding the lived experience of the Scottish justice system by speakers, Kim, Amie, Susie, Shaun and Brian. The event was hosted by Kenny MacAskill; an academic overview was provided by Lesley McAra and Vox Liminis contributed some musical reflections.

Blogs: www.cycj.org.uk.

Photos: flic.kr/ps/2VUTiz.

Podcasts: www.cycj.org.uk/resources/

Next issue

June 2015: special issue on *Policing* to be edited by Nick Fyfe, Director of the Scottish Institute of Policing Research, Dundee University and Alistair Henry, lecturer in criminology, University of Edinburgh.

scottish justice matters

Essential reading


New insights, cross cutting themes and ideas covering crime and criminal justice in Scotland.

Scottish Justice Matters is written by and for researchers, practitioners, policy advocates and academics.

Forthcoming themes:

- ❖ June 2015:
Policing
- ❖ Autumn 2015:
**Inequalities, social justice
and criminal justice** (provisional)
- ❖ Spring 2016:
Imagining punishment and justice
(provisional)



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